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A MANUAL FOR ONTARIO MAGISTRATES

by

S. TUPPER BIGELOW

*A Magistrate of the Province of Ontario
and a Queen's Counsel*

with an Introduction by

DANA PORTER

Chief Justice of Ontario



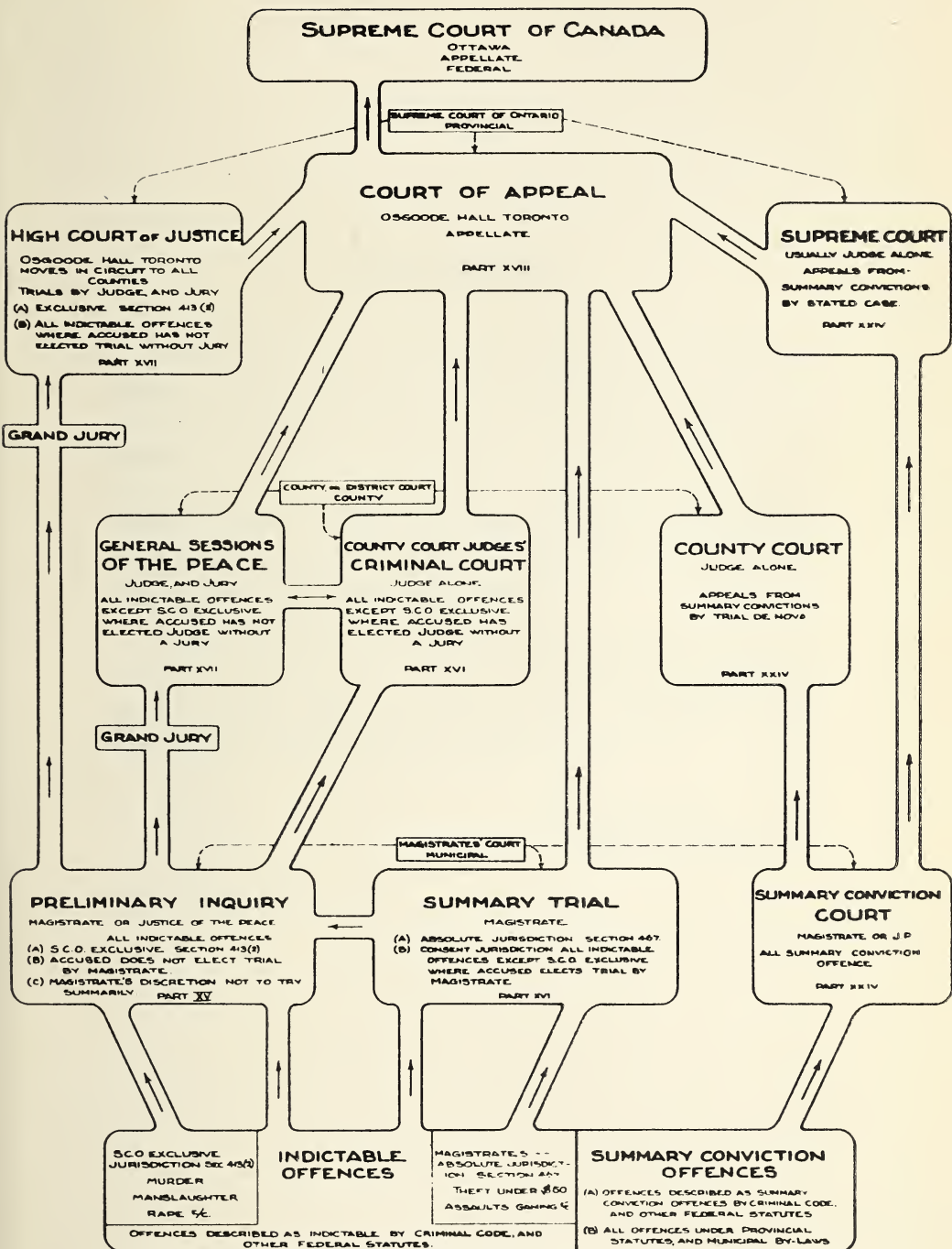
ONTARIO

Published under the direction of
HON. KELSO ROBERTS, Q.C., M.P.P.
Attorney General for Ontario

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FRONTISPIECE



FOREWORD

This is the first in a series of manuals for the judiciary and officials of the courts that will be published by the Attorney General's Department pursuant to the recommendations contained in the report on the county and other courts of the province made to me last autumn by Eric H. Silk, Assistant Deputy Attorney General. Magistrate Bigelow's excellent work reflects his indefatigable effort to accomplish the undertaking with a commendable degree of perfection.

Those of us who have at heart the improvement of Ontario's system of administering justice are grateful to Magistrate Bigelow and Mr. Silk for the forward steps in justice administration that are marked by their respective works.

KELSO ROBERTS,
Attorney-General.

September 1, 1962.

INTRODUCTION

This manual for Ontario Magistrates is a learned, interesting and colourful production. It will be of inestimable value to the magistrates of the province and, I am sure, that the wealth of material which it contains, so conveniently arranged and clearly presented, will appeal to the judiciary as a whole and to the legal profession as a most useful and practical contribution. To the newly appointed magistrate it will be invaluable and even to the most experienced, I should think, no less. It is the product of one who has carried on the duties of magistrate in the Toronto Courts for over 17 years. It is the work of a legal scholar of sound judgment and varied experience.

I find of special interest the author's comments in Chapter 26, "The Sentence of the Court". The problem of sentence is one of the most difficult and, at times, distressing for the court. The Criminal Code gives to the magistrates a wide discretion, in most cases, as to the length of the sentence. The magistrate, thus, must weigh with care the various factors to be taken into consideration and apply them to the special circumstances of each particular accused in the light of the problem of society in general. It is never an easy task. The suggestions thrown out in this chapter are not put forward as definite rules; they represent the considered views of one of the most experienced of our magistrates upon a difficult problem. Each magistrate, of course, must in each case make up his own mind not only as to sentence, but also as to questions of law. Mr. Bigelow's discussion will be a useful guide.

I am sure that this manual for Ontario Magistrates will fulfil the purpose for which it was designed.

DANA PORTER.

Osgoode Hall, Toronto
July 3, 1962.

P R E F A C E

When I was asked to write a manual for Ontario magistrates, I wrote a letter to them all, asking them what particular subjects they would like to have dealt with, and their replies were exceedingly helpful. All matters mentioned by them have been covered in this manual.

However, it is abundantly clear that this manual will be of no great assistance to any Ontario magistrate who was a lawyer to begin with, and has had many years on the magisterial bench. Rather than hoping that I might instruct them, I fondly hope that some of them will instruct me in the various problems I have from time to time, and in fact, my hope is far from a vain one, as I have on many occasions consulted many of them with rewarding results.

And in any case, every subject that is dealt with in the manual has already been done more exhaustively, more carefully, and better in other publications by more competent authorities than I am.

So my writing has been slanted largely at the newly appointed magistrate, particularly if he was a layman on appointment. I beg the indulgence of my seasoned fellows if, as they read the manual, they are inclined to think that a good deal of what they read they learned either (a) at their mothers' knees; (b) the first day they attended law school; or (c) within half-an-hour of being appointed a magistrate.

I should like to thank all magistrates who wrote me in reply to my letter asking them what subjects they wished to see covered in the manual. In particular, I should like to thank Judge V. Lorne Stewart of the Juvenile and Family Courts of Metropolitan Toronto for his contributed chapter, "The Juvenile and Family Court", of which, until I read this Chapter, my ignorance was abysmal; Magistrate Frederick J. Jasperson, Q.C., for his contributed chapter on "Costs"; the Inspector of Legal Offices, A. A. Russell, Q.C., for his contributed chapter, "Where the Fines Go"; Magistrate J. R. H. Kirkpatrick for his contribution on Traffic Courts or Clinics; the Honourable W. Irwin

Haskett, Minister of Reform Institutions and J. A. Graham, Deputy Minister of Reform Institutions for their contributed Appendix D; and T. George Street, Q.C., Chairman of The National Parole Board for material I have included in Chapter XXIII and Appendix C.

And I am greatly indebted to Henry H. Bull, Q.C., Crown Attorney of The Municipality of Metropolitan Toronto, on two counts: for permission to reproduce as the frontispiece of the manual the plan he designed to show how a criminal charge of whatever kind proceeds from the laying of the Information to its final disposition (if it should go that far) by the Supreme Court of Canada; and second, for permission to quote a part of his provocative address to a seminar of magistrates, which will be found in the Chapter, "The Sentence of the Court".

And I extend my thanks to Cartwright and Sons, Limited, for permission to include in the manual the Chapter on Contempt of Court, part of which I wrote for *The Criminal Law Quarterly* (Vol. I, No. 4, 475).

I should also like to express my grateful appreciation to the Honourable Chief Justice Porter for his more than kind Introduction to the manual.

And I should be an ingrate, indeed, if finally, I did not express my appreciation for the excellent work of Mrs. John A. MacCallum of the Department of the Attorney General for her painstaking typing of the manuscript and her retyping of doubtful passages and her assistance in proof-reading the galley proofs.

S. TUPPER BIGELOW.

City Hall, Toronto,
May 1, 1962.

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A MANUAL FOR ONTARIO MAGISTRATES

CHAPTER I

THE NEWLY APPOINTED MAGISTRATE

On appointment, many magistrates, whether they were members of the bar or not, whether they were familiar with the workings of magistrates' courts or not, often feel a strangeness in their new position.

Some will be almost appalled at the new responsibility that has become theirs, for example, with the awful and tremendous responsibility that might become theirs some day when they sentence a fellow-man to imprisonment for life. Others will worry about their fitness for the office sometimes thrust upon them very hurriedly. Others will from the first worry about the courts to which appeals from their decisions are taken. A wise trial judge once said: "The first year you are a judge, you worry about yourself; the second year, you worry about the Court of Appeal; after that, if you worry about anything, you would be better off going back to private practice."

While a little too ironic, perhaps, the judge's words have some application for the use of a newly appointed magistrate. He will find very soon after his appointment that things he regarded at first as insurmountable obstacles become in time mere routine. That is not to say, however, that he will not worry or that he will not regard his responsibility towards his fellow-man with all the seriousness of which he is capable. He will have many problems, of course, but in the course of time, they will become less and less.

In some European countries, there are schools for judges, and perhaps such a system has its merits. However, in all English-speaking countries, a judge or magistrate commences his duties on appointment without any instruction whatever. He probably thinks of the best judge or magistrate he has ever seen in court, and does his best to emulate him in performing his own duties.

It would be well for the newly appointed magistrate to sit in court with a fellow magistrate until he thinks he has the "feel" of the job. He should be very careful, in such case, to take no part in the proceedings; in fact, he would be best advised to say nothing at all during court.

After court, he will naturally ask many questions, which the senior magistrate will be only too glad to answer.

If possible, he should sit in this way with as many magistrates as he can. Thus, he will find many viewpoints on the same question, and he will be able to reconcile them as best he can for his own purposes.

Where the court to which the newly appointed magistrate has a Court Clerk, he will find him of tremendous assistance. He will be infinitely more knowledgeable than the newly appointed magistrate of court procedure, for example. However, the magistrate should never permit the Court Clerk to usurp any of the magistrate's functions and if necessary, he should make it clear to the Court Clerk as pleasantly as possible that he and he alone will preside in his own court.

There will come a time, and it will not be long, when the newly appointed magistrate will think, "Why, this job is actually very simple!" When that moment comes (no matter how wrong he may later be proved to be), he is ready to sit himself.

CHAPTER II

THE MAGISTRATE'S OFFICE

Magistrates are appointed by the Lieutenant Governor in Council, which is to say by the Lieutenant Governor, acting on the advice of his responsible Ministers. For the first two years following appointment, a magistrate or deputy magistrate serves during pleasure for a probationary period and may be removed from office in the same way as he was appointed.

After the probationary period is over, a magistrate cannot be removed from office, except for misbehaviour or inability to perform his duties properly and then only when a Royal Commission of Supreme Court judges has been convened to investigate and report upon the charges made against the magistrate. In this way, Ontario magistrates are assured of the same independence assured to judges; they need take no orders from anyone; they can and must be completely impartial.

An Ontario magistrate has jurisdiction in all parts of the Province. That is not to say, however, that he can go into a territorial jurisdiction where another magistrate commonly sits and hold court without the full consent and approval of the other magistrate or upon the request of the appropriate official in the Attorney General's Department. In metropolitan Toronto, the magistrates take the courts to which they are assigned by the senior magistrate and no others. There is nothing objectionable, however—indeed, it is commonly done—for two magistrates to agree to take each other's courts in the same or even in different jurisdictions.

As soon as conveniently may be after his appointment, a magistrate should be sworn in by the local County or District Court Judge. A magistrate takes two oaths of office: the one set out in *The Magistrates Act*, R.S.O. 1960, Chap. 226, sec. 6, and the one set out in *The Public Officers Act*, R.S.O. 1960, Chap. 326, sec. 4. The first is the oath of office and the second, the oath of allegiance.

The swearing in of a magistrate should be a formal and ceremonious occasion; it should be held in a court room and the judge, the presiding magistrate of that area and the newly appointed magistrate should have seats on the Bench. Local magistrates, crown attorneys and members of the Bar should be invited, and after the swearing in, it would be appropriate for the judge, the presiding magistrate, the senior crown attorney present and a senior member of the Bar to address those who have attended. The judge and all magistrates should be gowned, but members of the Bar need not be gowned, as they are not required to be gowned in magistrates courts.

The salary of a magistrate is fixed by the Lieutenant Governor in Council and varies throughout the Province, the salaries being larger in the more populous jurisdictions. Annual increments are usually, although not always, granted. The salaries of magistrates assigned to a city are paid by the government in the first instance but in effect, the government bills the city for it and the city pays it in the second instance. All other magistrates are paid by the government.

The age of retirement for magistrates varies, depending upon the dates of their appointments. If a magistrate was appointed on or before July 1, 1941, he may serve until he is 75 years of age; otherwise, he may serve until he is 70 years of age. However, after a magistrate has reached retirement age, he may be re-appointed to hold office during pleasure, but cannot hold office after he is 75 years of age in any case.

A magistrate is entitled to three weeks' annual vacation, but as many work on Saturdays, this can be regarded as a kind of overtime and although there is no statutory authority for compensation for overtime, the Department of the Attorney General will always be receptive to applications for leave of absence with pay to compensate for the extra hours worked. The Department is also sensible of the fact that many magistrates travel long distances to go from one court to another, and this is taken into account as well.

A magistrate is allowed 18 days sick-leave with pay each year, and if this is not used, it accumulates and upon a magis-

trate's retirement, he is paid, on the basis of his salary in his retiring year, for all unused sick-leave up to a maximum of six months' salary.

Six per cent of a magistrate's salary is deducted and paid into the Public Service Retirement Fund to assure him a pension or superannuation upon his retirement and in the event of his death before or after retirement, to assure his widow a pension. The amount of the pension is calculated by striking an average annual salary over the most lucrative three years worked and taking 2 per cent of that average for every year worked. For example, if a magistrate on retirement has worked 28 years, and his highest three years' salaries had been \$10,000, \$10,500 and \$11,000, the average of \$10,500 is struck; 56 per cent of \$10,500 is \$5,880. For his widow to benefit by a pension, a magistrate must have been in office for at least ten years, and her pension is calculated in the same way, but the operative figure is one per cent rather than two per cent. For example, if a magistrate dies after 15 years' service, and his average salary was \$10,500, the widow's pension would be 15 per cent of that figure, or \$1,575.

This Chapter has dealt only with the high lights of the office of the magistrate, and if further or more exact information is required, the following statutes should be consulted: *The Magistrates Act* (see reference above), *The Public Service Act*, R.S.O. Chap. 331, and *The Public Service Superannuation Act*, R.S.O. Chap. 332.

CHAPTER III

THE TOOLS OF OUR TRADE

Section 14 of *The Magistrates Act*, R.S.O., Chap. 226, provides that "The court-rooms, offices, furniture, equipment, supplies and stationery for magistrates shall be such as the Inspector (of Legal Offices) thinks appropriate." Books and periodicals come under the heading of supplies.

Upon the appointment of a magistrate, he is furnished with the Revised Statutes of Canada, 1952, and all Statutes of Canada promulgated since, the Revised Statutes of Ontario, 1960, the Revised Regulations of Ontario, 1960 and all Statutes and Regulations of Ontario promulgated since. If he wishes what are called office consolidations of any Act of Parliament or the Ontario Legislature, these will be furnished him upon demand by the Department of the Attorney General.

A magistrate should have a copy of the *Criminal Code and Selected Statutes*, prepared under the direction of the Minister of Justice and obtainable from the Queen's Printer, Ottawa. This volume includes the *Canada Evidence Act*, the *Extradition Act*, the *Fugitive Offenders Act*, the *Identification of Criminals Act*, the *Interpretation Act*, the *Juvenile Delinquents Act*, the *Lord's Day Act*, the *Official Secrets Act*, the *Penitentiary Act*, the *Prisons and Reformatories Act* and presumably the current edition includes as well the new (1961) *Narcotic Control Act*, the new (1959) *Parole Act* and the new (1962) *Penitentiary Act* and it will be noted that the *Ticket of Leave Act* was repealed in 1958. All the Statutes mentioned are federal Statutes.

Once a magistrate has this volume, he is sent amendments to the Statutes referred to, but he should request a second copy of each amendment, so that he can clip them and paste them into his volume where they belong.

A magistrate should have office consolidations of *The Ontario Liquor Control Act*, *The Ontario Liquor Licence Act*, *The Ontario Highway Traffic Act*, and the *Regulations* passed under each of these Statutes.

As for text-books, a magistrate should have or have ready access to the latest editions of the following:

NAME OF TEXT	PUBLISHER
<i>An Analysis of and a Guide to the New Criminal Code of Canada</i> by Austin O'Connor, Q.C.	The Carswell Company Ltd., 145 Adelaide Street West, Toronto.
<i>Canadian Criminal Evidence</i> by A. E. Popple, LL.B.	The Carswell Company Ltd., (see above)
<i>Crankshaw's Criminal Code of Canada</i> by A. E. Popple, LL.B.	The Carswell Company Ltd., 145 Adelaide Street West, Toronto.
<i>The Criminal Code of Canada</i> by J. C. Martin, Q.C.	Canada Law Book Co. Ltd., 100 Richmond Street East, Toronto.
<i>Criminal Procedure Manual</i> by A. E. Popple, LL.B.	The Carswell Company Ltd., (see above)
<i>The Dictionary of English Law</i> edited by Earl Jowitt.	Sweet and Maxwell Ltd., 11 New Fetter Lane, London, England.
<i>A Dictionary of Foreign Phrases and Classical Quotations</i> edited by Hugh Percy Jones.	John Grant, Bookseller, Ltd., 31 George VI Bridge, Edinburgh, Scotland.
<i>Manual of Motor Vehicle Law, Civil and Criminal</i> by C. C. Savage, Q.C.	Canada Law Book Co. Ltd., (see above)
<i>O'Connor's Highway Traffic Act</i> by Roderick G. Phelan, B.A.	The Carswell Company Ltd., (see above)
<i>Snow's Criminal Code of Canada</i> by A. E. Popple, LL.B.	The Carswell Company Ltd., (see above)

If a magistrate is a lawyer, he is eligible for membership in the Canadian Bar Association, and the Association's publications, the *Canadian Bar Journal* and the *Canadian Bar Review*, come to him automatically.

The *Ontario Reports* and the *Ontario Weekly Notes* are now published together, and occasionally report criminal cases; these should be readily available to all magistrates, whether by subscription or otherwise. The publishers are *Cartwright and Sons Ltd.*, 100 Richmond Street East, Toronto.

Other law reports and periodicals dealing with criminal law of benefit and interest to magistrates are:

NAME OF PUBLICATION	PUBLISHER
<i>Canadian Criminal Cases</i>	Canada Law Book Co. Ltd., (see above)
<i>The Criminal Appeal Reports</i> (Reported decisions of the English Court of Criminal Appeal)	Sweet and Maxwell Ltd., (see above)
<i>The Criminal Law Quarterly</i> (A Canadian quarterly with comment and articles on the criminal law, with reports of magistrates' cases)	Canada Law Book Co. Ltd., (see above)
<i>The Criminal Law Review</i> (A monthly dealing with decisions of the criminal courts in England, and contain- ing articles on the criminal law)	Sweet and Maxwell Ltd., (see above)
<i>Criminal Reports (Canada)</i>	The Carswell Company Ltd., (see above)
<i>The Journal of Criminal Law</i> (A quarterly dealing with the decisions of courts of summary jurisdiction, Quarter Sessions, Assizes, Divisional Courts, the Court of Criminal Appeal, the House of Lords, the Privy Council, Scottish and Irish criminal cases and containing articles on the criminal law)	The Journal of Criminal Law, Walkden House, Melton St., Euston, London, N.W. 1, England. (May be ordered from Canada Law Book Co. Ltd.; see above)

For day-to-day operation, a magistrate should have a note-book, a diary and a commonplace book. The note-book I use is bound in red leather, is letterhead size, has an index at the front and contains 400 numbered margined lined pages. I can get along without the index, as indexing one's cases, so far as I can see, serves no useful purpose unless all the information you have about a case you tried you want to look up is the name of the accused. Invariably, you will have more information than that.

And now, if I may introduce a personal note, I shall deal with how I use these three tools of our trade. My method I picked up by trial and error and I find that it is perfectly satisfactory for me. You may in all likelihood have a better one or one that you find perfectly satisfactory; we shall not quarrel on that account. In any event, I don't know how other magistrates use these tools; all I know is how I use them.

Into court, I take with me my copy of the *Criminal Code and Selected Statutes*, my note-book, a fountain-pen and a ball-point, the latter to use if the fountain-pen runs dry. Two ball-points would do as well, of course. In addition, I have scotch-taped to the inside front cover of my Criminal Code, a 25-year calendar (1957-1981), a copy of which can be readily procured from the Canadian Pacific Railway or the Royal York Hotel.

For each day, I start at the top of a fresh page, and across the top of the page write the date and at the top right-hand corner the name of counsel or whoever is appearing for the Crown. I take no notes of any adjournments or remands; this is simply a waste of time. When the first case is ready to proceed, I write the name of the accused and his age in the margin; the offence with which he is charged to the right of the margin and the name of his counsel at the far right on the same line; if he has none, I note that no one appears for him. If the Crown has the option of proceeding summarily or by indictment, I note how they elect; if the accused elects to be tried by a magistrate, I note it, and I note his plea. If he gets a warning, I note that.

Using the magistrate's shorthand I recommend (see Chapter XXI), I find that I can take the evidence as thoroughly, for all practical purposes, as a court reporter, and I get my rest from writing when cross-examination takes place. Then, I record only answers that change the story as given in examination-in-chief, and that rarely happens, as we all know. If I dispose of the case as soon as I have heard it, I make no special note, beyond recording the fact that the accused has no record, if that is the case, or a short note setting out the nature of his previous record, and the sentence imposed.

If, however, the case is to go over to another day, either because it is only partly heard or for sentence, I put the date the accused is to reappear at the end of the notes of the case and circle the date.

The next morning, I go through my notes of the previous day and enter in my diary all cases yet to be disposed of by name and page-number of my note-book. Then I look at that day's

date for cases that I have to dispose of on that day, and enter them in my note-book, with the page-number of my note-book where my notes of each trial are recorded. I then refresh my memory by reading my notes of the trials of the cases to be disposed of or continued.

As note-books are used, they are kept permanently; when the year ends, all diaries are kept permanently. Thus, if I am told the date I tried or sentenced anyone and given his name, I can instantly refer to my notes of the trial, even if the trial was held many years before.

My commonplace book is a black soft-leather bound seven-ring loose-leaf binder and is indexed alphabetically. As I come across an interesting case or a point of law that I think should be recorded, I record it under its subject-matter. For instance, under "A" I see I have recorded cases under the following headings: Absconding, Accessories, *Agents Provocateurs*, Amendment of Information, Attempts, Age, Attempted Indecent Assault, *Amicus Curiae* and Accomplices. Under these headings, I have about 100 cases listed, and of course, many of these cases will be found under other headings, too; for example, under Age, I see I have listed a number of cases which are the authority for the proposition that "a girl's own evidence as to her age is insufficient". I also have those cases indexed under Evidence. Very often, you need go no further than your commonplace book for a tricky point of law you have forgotten.

Under Motor Vehicles, I see I have listed all the cases I have ever heard about, deciding when a motor vehicle is a motor vehicle or in much the same circumstances, when it is not. One of these days, I might have to make some kind of sense out of all these conflicting decisions, and make a decision myself. If I have to, at least I have all the quotations of the cases before me, and I suppose I could take a day off and read them all and finally make a decision as mixed-up as any of them. The point is, though, that I have them all in my commonplace book. On countless occasions, my commonplace book has saved me hours of time.

CHAPTER IV

JURISDICTION OF MAGISTRATES

Pursuant to the provisions of Code sec. 467, the jurisdiction of a magistrate is absolute, i.e., he may try an accused person without his consent where the accused is charged with:

- (a) Theft of anything except a testamentary instrument of a value not exceeding \$50.00 (Code sec. 467 (a) (i));
- (b) Obtaining or attempting to obtain money or property of a value not exceeding \$50.00 by false pretences (Code sec. 467 (a) (ii));
- (c) Unlawfully having in his possession anything of a value not exceeding \$50.00, knowing that it was obtained by the commission in Canada of an offence punishable by indictment (Code sec. 467 (a) (iii));
- (d) Attempted theft (Code sec. 467 (b));
- (e) Obstructing a public or peace officer (Code sec. 110 (a));
- (f) Keeping a common gaming or betting house (Code sec. 176);
- (g) Bookmaking, pool-selling, etc. (Code sec. 177);
- (h) Various offences involving lotteries (Code sec. 177);
- (i) Cheating at play (Code sec. 181);
- (j) Keeping a common bawdy-house (Code sec. 182);
- (k) Common assault and assault causing bodily harm (Code sec. 231);
- (l) Assaulting public or peace officer (Code sec. 232 (2) (a)); or
- (m) Fraud in relation to fares (Code sec. 336).

A magistrate has no power to try an accused person, whether with his consent or not (Code sec. 413), where the accused is charged with:

- (a) Treason (Code sec. 47);
- (b) Alarming or harming Her Majesty (Code sec. 49);
- (c) Intimidating Parliament or a Legislature (Code sec. 51);
- (d) Inciting to mutiny (Code sec. 53);
- (e) Sedition (Code sec. 62);
- (f) Piracy (Code sec. 75);
- (g) Piratical acts (Code sec. 76);
- (h) Bribery of officers (Code sec. 101);
- (i) Rape (Code sec. 136);
- (j) Causing death by criminal negligence (Code sec. 192);
- (k) Murder (Code sec. 206);
- (l) Manslaughter (Code sec. 207);
- (m) Threatening to murder (Code sec. 316 (1) (a));
- (n) Conspiring, etc., to restrain, etc., trade, etc. (Code sec. 411);
- (o) The offence of being an accessory after the fact to treason or murder (Code sec. 413 (2) (b));
- (p) Corrupting justice (Code sec. 100);
- (q) Attempting to commit any offence set out in (a) to (n) inclusive herein (Code sec. 413 (2) (d)); or
- (r) Conspiring to commit any offence set out in (a) to (n) inclusive herein (Code sec. 413 (2) (e)).

However, when an accused person is charged with any offence which a magistrate has no power to try, a preliminary inquiry is held, the procedure for which is set out in Part XV of the *Criminal Code*, and the magistrate may commit the accused

person for trial by a higher court on any offence the evidence may lead him to believe has been committed, as well as or instead of the offence with which the accused is actually charged. And if the magistrate is of the opinion that no *prima facie* case has been made out by the Crown, he may—indeed, it is his duty to—discharge the accused. But that is not necessarily the end of the matter. In spite of the double jeopardy rule, which might at first blush seem to apply, the Crown can nevertheless proceed in a higher court by indictment, if the Crown Attorney thinks the magistrate was wrong.

All other offences not hitherto mentioned in this Chapter may be tried by a magistrate with the consent of the accused. It is a remarkable thing that the vast majority of accused persons who have the right to be tried by a judge or a judge and jury neglect to take advantage of that right. Depending on the year considered, from 90 to 95 per cent of accused persons are tried by magistrates in Canada. This argues a healthy respect for the fairness and integrity of the magistracy throughout the whole of Canada.

CHAPTER V

THE ELEMENTARY RULES OF EVIDENCE

At the outset, it will be realized that to deal with the rules of evidence in a single chapter with any completeness is manifestly impossible. Magistrates have already been advised to read Popple's *Canadian Criminal Evidence*, a book which deals exhaustively with what is a very difficult and complex subject. But it is considered that some purpose will be served by dealing with the subject here in what is admittedly a brief, if not, indeed, a sketchy manner.

The rules of evidence, of course, have been crystallized over many centuries and are based on what we call the "adversary method" of court procedure. That is to say, there are two sides to every case a magistrate tries, the Crown on one side and the accused on the other, and each in its turn adduces evidence from the mouths of its witnesses or by producing exhibits introduced and proved by witnesses, such as letters. From all such evidence, the magistrate must come to an opinion as to the guilt of the accused, and either (if the hearing is a preliminary inquiry) commit the accused for trial or discharge him, or (if he is trying the accused) convict and sentence him or acquit him.

It would be a very simple thing to try a case if there were any infallible method of telling when a witness was lying, when he was merely mistaken, or whether, remarkably enough, he was telling the truth. There not being any, however, we must apply the rules of evidence which have been built up by many generations of wise and experienced judges. The purpose of rules of evidence is to enable the courts to ascertain the true facts in any disputed matter, insofar as human frailty, credibility and fallibility will permit. For a judge in a civil case, that must be a very difficult thing; for a magistrate, however, it should be a very simple matter. When he tries an accused person, he is not weighing something in a balance-scale based on the evidence he has heard to see which pan will go up and which down; he is simply determining if the guilt of the accused is proved beyond a reasonable doubt. If it is, the accused is guilty;

if it is not, the accused must be acquitted. Indeed, the magistrate might not even believe the story told by the accused, but if his story might reasonably be true, there is the reasonable doubt and the accused must be acquitted. A verdict of not guilty in a criminal case is not a verdict that the accused is innocent; it is a verdict that the accused has not been proven guilty beyond a reasonable doubt.

HOW EVIDENCE IS GIVEN

Adult witnesses before giving their evidence either take the oath in the usual form or affirm. The oath must be one that is binding on the witness's conscience. If the witness refuses to be sworn, it must be ascertained why he refuses, and acceptable reasons are that it is against his religious principles, that he has no religious belief, or that he is an atheist. He may then affirm. If the witness is a child, it must be ascertained if he understands the nature of an oath. The Criminal Code is silent as to what a "child" is, but it was held in *R. v. Antrobus*, 87 C.C.C., 122, and *R. v. Nicholson*, 98 C.C.C., 291 at 293, that "the capacity of a child under 14 to take an oath is not presumed". The magistrate should ask the child a few simple questions to put him at his ease; for example, the interrogation might go like this:

Magistrate: How old are you, George?

Child: Thirteen, Sir.

Magistrate: What school do you go to?

Child: King Edward School, Sir.

Magistrate: Oh, yes, I know that school very well; do you like it there, George?

Child: It's all right, I guess.

Magistrate: Now, George, this room is a court-room. Have you ever been in a court-room before?

Child: No, Sir.

Magistrate: But I dare say you have seen court-rooms in the movies and on TV?

Child: Yes, Sir.

Magistrate: And have you seen a witness—you're a witness today, George—take the Bible (indicating) in his hand and swear to tell the truth, the whole truth and nothing but the truth, so help him God?

Child: Yes, Sir.

Magistrate: And if we ask you to take the Bible in your hand and you swear to tell the truth, the whole truth and nothing but the truth, so help you God, and then (pause) you tell a lie, do you know what would happen to you?

If the child says "No", the magistrate must continue:

Magistrate: But you do know, George, that it is very important for you to tell the truth here today, don't you?

Child: Yes, Sir.

Magistrate: And you promise me, George, that you will tell the truth here today?

Child: Yes, Sir.

The child's evidence is then taken.

There are any number of answers the child may give which will warrant the magistrate having him sworn. Some are:

"I will go to hell."

"I will go to jail."

"I will be punished."

This may seem somewhat time-consuming, but actually, it takes only a few seconds and it is extremely important that it be done, or a conviction of the accused would be quashed on appeal.

The witness is then examined by the counsel who called him. There will always be a counsel for the Crown, although if he is a police officer, he is not properly called "counsel", as counsel are either barristers or solicitors or both. (Code sec. 2 (7).) This examination is called "examination-in-chief". If the accused is not represented, but calls a witness, the magistrate should

help the witness tell the court what the accused wants him to tell. If the witness has been in the court room, he will probably have understood what has been going on, but nevertheless, the witness should be told of the plight the accused is in, and asked if he can help the accused in any way; does he know anything about the case that would help the accused? and so on. If the witness seems vague or uncertain, the accused should be asked what it is precisely that the witness can tell the court. In any event, the witness should not be allowed to go until the accused is perfectly satisfied that he has told the court everything the accused was hoping he would tell, or at least, that he has been given the opportunity of doing so. In the examination-in-chief, it is improper to ask leading questions, although it is not objectionable to ask such questions about introductory or undisputed matters.

After the examination-in-chief is finished, counsel for the other side, or the accused himself, if he has no counsel, takes over in cross-examination, and here, leading questions are not only proper; they are essential, as the cross-examiner attempts to shake or change the story told by the witness, if as is altogether likely, the witness's evidence in examination-in-chief has done the cross-examiner's side some harm. Cross-examination is also used to elicit facts favourable to the cross-examiner's side which the witness has not dealt with at all, most likely because he was not asked about those facts in examination-in-chief. A witness may be asked in cross-examination if he has a criminal record, and this is done, of course, to discredit him and his testimony if, in fact, he has such a record. Cross-examination is not limited to the matters dealt with in examination-in-chief and may wander very far afield of the issues being tried, just so long as the cross-examiner is testing the credibility of the witness.

Following cross-examination there is re-examination of the witness by counsel or the person who conducted the examination-in-chief, and re-examination must be limited to the matters dealt with in cross-examination, and again, leading questions must not be asked.

Although it is often permitted, there is no authority for any further examination of a witness.

When the Crown has called all its witnesses and they have been examined in chief, cross-examined and re-examined, counsel for the accused calls his witnesses for similar examination. Where the accused has no counsel, he should be asked, "Have you any witnesses to call or do you wish to make a statement yourself? You may do so in whatever order you like."

It is not an uncommon thing that when an accused is not represented by counsel and the Crown's first witness has been examined in chief and the magistrate asks the accused, "Do you wish to ask the witness any questions?" the accused makes a statement instead of asking a question. The magistrate should say, "Later on, you will have a chance to make a full statement, but at this stage of the case, you have the right to ask this witness any questions you like. Do you wish to ask this witness any questions?" If he persists in making a statement, as so many accused do, the magistrate should put his statement in question-form and ask the witness the question himself, and keep on asking the accused if he has more questions until the accused says that he has no more questions to ask the witness. It is much better to handle the matter in this fashion rather than give the accused the impression that the magistrate is unwilling to hear what he has to say. Even though later, he may be heard fully when it comes time to tell his story, he is bound to feel resentment at what he believes the magistrate's unfairness in shutting him up and not letting him say what he had to say when he wanted to say it.

THE USE OF NOTES

Witnesses are not permitted to read their evidence from a prepared written statement or from their note-books, but they may refer to their notes to refresh their memories, provided the notes were made at the first reasonable opportunity after the occurrence of the matters noted. When notes are used in this fashion, a witness may be required to produce his note-book for inspection by the person who is cross-examining him.

DOCUMENTS

Letters or other documents are often used as evidence, but except for documents that may be received as being *prima*

facie evidence of the truth of their contents (for example, a certificate of marriage (Code sec. 241 (2)), or a certificate of a conviction for an offence involving a motor vehicle (H.T.A. sec. 152 (1)), all documents must be proved orally. For example, a letter might be offered in evidence by its addressee; what he is proving is merely that he received such a letter, not that the contents of the letter are true. Or a letter from the accused might be offered in evidence by someone who saw the accused write and sign it or by someone who is familiar with the accused's signature. Again, this is not proof of the truth of the contents of the letter; it is proof merely of the fact that the accused wrote the letter.

As for documents that are *prima facie* proof of the truth of their contents, a marriage certificate, for example, attests to the fact that Adam Black and Eve White were married at a certain place on a certain day, but if Adam Black is the accused on a charge of bigamy, additional evidence will be required to establish that the Adam Black mentioned in the marriage certificate is the same Adam Black as the accused.

Sometimes, the original document cannot be produced because it has been lost or destroyed. In such a case, secondary evidence is permitted, such as, in the case of a letter, a carbon copy of the letter, which may be produced by the person in whose custody it was, or someone could testify as to the contents of the letter if he had read or signed it before it was sent.

In the case of documents, as in all other cases, the common law rule known as the "best evidence" rule applies, which is merely that the best evidence procurable should be given and if primary evidence is available, secondary evidence should not be permitted.

OPINION EVIDENCE AND EXPERTS

Generally speaking, opinion evidence is not permitted; for example, it would be improper for a witness to say, "The accused was driving in a highly dangerous and irresponsible manner." The witness must tell the court what he saw or heard.

Perhaps he could tell the court also what he touched or smelt or tasted, since he has five senses altogether, but such evidence comes close to opinion evidence, for if he were to say, for example, "The meat was much too salty", that would be of little evidentiary value, as the meat might have been too salty for him but not salty enough for someone else. A magistrate will be able to tell in nearly all cases when a witness is about to give opinion evidence, and he should be stopped before the objectionable evidence gets into the record.

However, opinion evidence of experts is permitted, and if an expert witness is called, he must be qualified first, that is, he must state his qualifications: his degrees, his experience and the length of time he has been engaged in his field. Experts commonly heard in our courts are physicians, chemists, police officers who have been specially trained in the use of the breathalyzer machine, handwriting experts, and of course there are many others. In this connection, it is well to bear in mind that expert testimony is not acceptable in pseudo-scientific matters, for example, graphology, astrology and the like. An extension of the rule will be obvious: if a person knows the handwriting or the signature of another, perhaps by corresponding with him over a protracted period of time, or actually seeing him write, his evidence identifying the handwriting to be that of the person in question would be accepted; he has become, so to speak, an expert on that person's handwriting. Similarly, the testimony of a police officer or any mature person that another person was drunk will be accepted, although it is obvious that the evidence would have more weight if the police officer said instead: "The accused was unsteady on his feet, and had to hold on to the side of his car to prevent himself from falling; his breath smelled strongly of liquor; his speech was incoherent and his eyes were watery and bloodshot," and the evidence would have more weight still if it were given by a physician who had examined the person who was allegedly intoxicated immediately after the events that led to his being charged with an offence in which his intoxication was a factor.

Sometimes, although not often, two experts on the same subject will contradict each other, and it will then be the duty

of the magistrate to determine, if he can, which one, if either, is stating the truth. In such a case, it seems that there would be reasonable doubt about the matters upon which the expert evidence was given.

STATEMENTS IN THE HEARING OF THE ACCUSED

It is well known that hearsay evidence is not accepted; a witness must not give evidence of what someone told him; that person should come to court so that his evidence may be taken on oath and he may be cross-examined. But the hearsay rule has its exceptions, and the most common one is that a witness may say what was said by someone else in the presence and hearing of the accused. But even so, before it can be accepted as evidence against the accused, it must be established that the accused did or said something which assented to the truth of what was said.

For example, if a witness said: "Adam Black told me in the presence of the accused that the accused had broken into his house" would be admissible evidence if it were *first* ascertained that the accused assented to the truth of the statement. In court, this would come out something like:

Crown: Now, officer, when you came upon the scene, who was there?

Witness: Mr. Black, Adam Black, and the accused.

Crown: And did Mr. Black say anything? Just tell us if he said anything. Do not tell us what he said.

Witness: Yes, Sir, he said something.

Crown: And after he said something, did the accused say anything?

Witness: Yes, Sir.

Crown: What did the accused say?

Witness: He said, "Well, so what? I needed some money to get out of town."

Crown: Very well, then; what was it Mr. Black said that called for the reply the accused made?

Witness: He said, "I caught this man—indicating the accused—red-handed breaking into my house."

However, if it had come about that the accused's statement instead had been, "It's a lie, I was told to come here by a friend of mine who told me he lived here. I was to meet him here", then such a statement would make the witness's account of what Mr. Black said in the presence of the accused inadmissible, and Mr. Black would have to give evidence himself of what took place and what he and the accused said to each other.

STATEMENTS IN THE HEARING OF THE ACCUSED

The general rule about statements or admissions or confessions by the accused is that although they are a kind of hearsay, they will be admitted in evidence provided they were made voluntarily.

Police officers, of course, question a good many people in their investigation of crime, and in the course of such questioning, such answers as the accused makes are admissible until the point comes when the officer decides to arrest the person being questioned. At that point, whether the accused is actually arrested or not, the police officer must give the accused the customary caution; he must be told he is under arrest, or going to be arrested, for a certain offence; he does not have to say anything, but anything he does say will be taken down in writing and may be used in evidence. (Note that the words "against you" are not used; if they are, it is enough to invalidate a statement by the accused.) Then if the accused says anything, everything he said may be adduced in evidence (not just part of it) provided it is first proved that what he did say was not elicited by the use of force or threats or promises.

EVIDENCE OF SIMILAR ACTS

Generally speaking, evidence of the accused having committed similar acts is inadmissible, although if the accused elects to give evidence on his own behalf, he may be asked about his criminal record. But again, this rule has exceptions, and if the accused sets up a defence that what happened was accidental or that he had no intent to do what he did, evidence may be

adduced that on other occasions, he acted in the same or a similar fashion. Or evidence of similar acts may be adduced to indicate a scheme or planned course of conduct.

HUSBAND AND WIFE

While either a husband or a wife is competent to give evidence on behalf of the other, when one is an accused person, there must be common law or statutory authority for them to be compellable witnesses on behalf of the Crown. The statutory authority is found in sec. 4 of the *Canada Evidence Act*, as amended by Code sec. 749. The wife or husband of a person charged with an offence is a competent and compellable witness for the Crown in the following cases:

- (a) Rape;
- (b) Attempted rape;
- (c) Sexual intercourse with female under 14;
- (d) Sexual intercourse with female 14-16;
- (e) Sexual intercourse with feeble-minded, etc.;
- (f) Incest;
- (g) Seduction, 16-18;
- (h) Seduction, promise of marriage;
- (i) Sexual intercourse with step-daughter, etc.;
- (j) Sexual intercourse female employee;
- (k) Seduction female passenger on vessels;
- (l) Buggery;
- (m) Gross indecency;
- (n) Parent or guardian procuring;
- (o) Householder permitting premises to be used for sexual intercourse by female under 18;
- (p) Corrupting children;
- (q) Indecent act;
- (r) Vagrancy;

- (s) Procuring;
- (t) Failing to provide necessities;
- (u) Abandoning child;
- (v) Abduction of female;
- (w) Abduction of female under 16;
- (x) Abduction of child under 14;
- (y) Bigamy;
- (z) Procuring feigned marriage;
- (aa) Polygamy;
- (bb) Participating in unlawful marriage;
- (cc) Theft by husband or wife of property of the other;
- (dd) Conspiring to induce a woman to commit adultery by fraud;
- (ee) Attempt sexual intercourse with female under 14;
- (ff) Attempt sexual intercourse with female 14-16;
- (gg) Attempt buggery;
- (hh) Contributing to juvenile delinquency (*Juvenile Delinquents Act*, R.S.C. 1952, Chap. 160, sec. 33);
- (ii) Inducing, etc., child to leave detention home, etc. (*Juvenile Delinquents Act*, R.S.C. 1952, Chap. 160, sec. 34).

PRIVILEGE

Except as indicated above, communications made between husband and wife are privileged; that is to say, neither one can be compelled to answer any questions dealing with what one has said to the other. This rule holds only for the time they were married.

Similarly, communications made between solicitor and client as to professional matters are privileged, but this rule does not apply if the communications dealt with the pursuit of criminal activity or consisted of a criminal offence in themselves.

Many people are under the impression that communications between physician and a patient and between a clergyman and a parishioner are privileged, but there is no foundation in the law for either proposition.

ACCOMPLICES

A jury must be told by the trial judge that it is dangerous to convict on the uncorroborated evidence of an accomplice, and a magistrate, being in effect both judge and jury, must similarly "charge himself", as the expression is, which means that if he convicts such an accused person, he must say something for the record that indicates that he is aware of the rule. However, if I may be permitted to make a personal observation in this connection, it is so dangerous that I have never done it. The danger is great and it is obvious: an accomplice is anxious to minimize his participation in the crime, and by corollary, just as anxious to maximize the accused's participation in it, even to the extent, perhaps, of inventing the guilt of others. It must be remembered, however, by a rule of law, that the accomplice has already been dealt with by the law for his participation in the crime, so it might be argued that he has nothing to gain and nothing to lose by telling the truth. The jail or penitentiary inmate is highly parole-conscious, and he might well be impelled to do all he can to convict someone in the hope that the Crown or the Parole Board will be impressed by his act of good citizenship, as he will call it, and release him well before his allotted time.

CHILDREN

The evidence of children not under oath should be regarded with suspicion, as they are very imaginative for one thing, and may have been carefully coached, if not suborned to tell a false story, for another. The Code wisely provides that a person cannot be convicted upon the unsworn evidence of a child and it is not enough to have the evidence of a child corroborated by another child who is not sworn. Corroborative evidence against an accused person means, of course, evidence that first a crime was committed, and second, that it was committed by the accused, and evidence which falls short of this is not corroboration.

CORROBORATION

Before an accused person can be convicted of some offences, corroboration is required. These offences are:

- (a) Treason (Code sec. 47 (2));
- (b) Perjury (Code sec. 115);
- (c) Sexual intercourse with feeble-minded, etc., (Code sec. 131);
- (d) Incest (Code sec. 131);
- (e) Seduction, 16-18 (Code sec. 131);
- (f) Seduction, promise of marriage (Code sec. 131);
- (g) Sexual intercourse with step-daughter, etc. (Code sec. 131);
- (h) Sexual intercourse female employee (Code sec. 131);
- (i) Seduction female passengers on vessels (Code sec. 131);
- (j) Parent or guardian procuring (Code sec. 131);
- (k) Procuring (Code sec. 184 (3)), but note exception of Code sec. 184 (1) (j);
- (l) Communicating venereal disease (Code sec. 239 (3));
- (m) Procuring feigned marriage (Code sec. 242 (2));
- (n) Forgery (Code sec. 310).

SEXUAL OFFENCES

Section 134 of the Code provides that where an accused person is charged with rape, attempted rape, sexual intercourse with a female person under the age of 14, sexual intercourse with a female person 14 years of age and under the age of 16 and indecent assault, "the judge shall, if the only evidence that implicates the accused is the evidence, given under oath, of the female person in respect of whom the offence is alleged to have been committed and that evidence is not corroborated in a material particular by evidence that implicates the accused, instruct the jury that it is not safe to find the accused guilty in

the absence of such corroboration, but that they are entitled to find the accused guilty if they are satisfied beyond a reasonable doubt that her evidence is true”.

So far as rape or attempted rape is concerned, the magistrate will be dealing with the matter at a preliminary inquiry, but in the absence of corroboration, he would be justified in discharging the accused. So far as the other offences mentioned are concerned, if he is trying the accused as if he were a judge and jury and if he convicts the accused, he should “charge himself”, i.e., mention for the record that he is aware of the fact that it is not safe to convict the accused but he is nevertheless convinced beyond a reasonable doubt that the story of the complainant is true.

While Code sec. 134 deals only with the offences mentioned in it, a wise magistrate will apply it to all sexual offences, as is the case in England.

Another exception to the hearsay rule should be mentioned here and that is that when a woman or child victim of a sexual assault complains of the assault to someone else, as soon after the assault as may reasonably be expected, the latter may tell the court of the complaint. But this is not to be considered as corroboration of the story told by the victim and in law, it has only two effects: first, to show the consistency of the complainant's story, i.e., she did not invent the whole story at a later time; and second, to negative consent on her part to the action taken by the accused.

FOOTNOTE

There will be many ramifications of the Rules of Evidence in criminal cases that will be brought to a magistrate's attention and while he should be able to make an instant decision, if he cannot, he can always reserve judgment on the disputed matter and remand the accused for as short a time as possible, or if the nature of the disputed point does not prevent him from proceeding with the case, he can likewise reserve judgment and deliver his judgment some time before the case is finished. Very often, a disputed matter can be settled very quickly by consulting the appropriate law during a short recess of court.

CHAPTER VI

A FEW SIMPLE RULES

HEAR THE OTHER SIDE

One would think that this is elementary but sometimes an accused person, through ignorance of court procedure, is not afforded every possible chance to defend himself by calling witnesses who can assist him. An oft-heard remark from an accused is: "And you can call Adam Black to prove that if you don't believe me; he was with me at the time." Obviously, the accused should be given the opportunity of bringing Mr. Black to tell his story; it is not sufficient for the magistrate to say: "Well, you should have brought Mr. Black; we are trying the case today and it was your responsibility to see that Mr. Black came to court to give evidence on your behalf." On the other hand, the magistrate may be willing to accept the accused's version of what he says Mr. Black can corroborate, in which case there is no necessity for calling Mr. Black. This can be made clear to the accused by saying: "There is no need to call Mr. Black on that point; I accept your version of what took place as correct."

NEVER RUSH A CASE

In a good deal of uninformed writing about magistrates courts, a great deal of emphasis is put on the heavy case-load magistrates have to carry, and it is often suggested and indeed said that a magistrate cannot possibly give the time and attention to the cases he tries as would be given to the cases by a judge or judge and jury. This is simply unadulterated nonsense. There is no reason why a magistrate cannot give as much attention to and try with as much care and patience an alleged parking violation as a judge and jury do with a murder case. If the case cannot be finished today, it can be finished later on, always remembering the old saw, Justice delayed is Justice denied. If a magistrate's case-load is too heavy, he should inform the Attorney General's Department, and if he needs assistance, he will get it. Magistrates who were lawyers before

their appointments remember with no fondness magistrates who would say: "You asked that question before; let's get on with the case; we have a lot of cases on the list today, and we cannot waste time listening to counsel ask the same questions over and over again."

If the magistrate is rushing the case, it will readily become apparent to everyone in the court room, and particularly to the accused, who will quite naturally feel that he has not been given a fair trial.

"MY COURT"

This is an objectionable phrase for a magistrate to use, but it is often heard, such as when counsel refers to a decision made by another magistrate (by which, of course, the presiding magistrate is not bound) and the presiding magistrate says: "That may be so, but that's not the way it's going to be in my court." It is better and more dignified to omit the use of "I" and "my court" and substitute for both "the court".

MAGISTRATES' GOWNS

There is no authority for the mandatory wearing of the magistrate's gown, but it is universally agreed that wearing it enhances the dignity of the court.

INTEREST, BIAS OR PREJUDICE

It should be obvious that a magistrate should never try a case in which he has an interest, pecuniary or otherwise, or where he has a bias or prejudice. We all have our natural prejudices, of course; one magistrate will have harsh views of users of liquor; another will view sex offences with abhorrence; still another imposes heavy sentences on users of narcotics. But magistrates should not take their personal prejudices on the bench with them.

In the larger centres, it is always easy for a magistrate to avoid trying a friend or an acquaintance and he should avoid it whenever he can, as the natural thing for a magistrate to do if he does try a friend, for example, is to lean over too far the wrong (or is it the right?) way, to make assurance doubly sure

that he will not be favouring the accused in any way. So there is a bias, after all. A magistrate shouldn't have to lean one way or the other; he should be independent, and hence, just.

But in the smaller centres, of course, a magistrate knows or knows about practically everyone who appears before him, and admittedly, he has a difficult problem. But such magistrates develop very quickly a sense that enables them to deal with such cases dispassionately, fairly and justly.

It would seem to be obvious that a magistrate who was the President of a curling club would not try an employee of the same club who was charged with theft from the club, but one Canadian magistrate did precisely that and of course, the conviction was quashed and a new trial ordered. (*Boudreau v. Regina*, 127 C.C.C., 355.)

AMBIGUOUS PLEAS OF GUILTY

If they are ambiguous in the slightest degree, they should be treated as pleas of not guilty, and the magistrate should order accordingly.

HESITATION OF AN ACCUSED IN GOING INTO THE BOX

It will sometimes happen that the Crown has completed its case and the magistrate can see that it is readily answerable, but if the accused declines to give evidence and call witnesses, the magistrate will be obliged to convict, weak as the Crown's case might be. In such case, it is altogether likely that the accused is declining to give evidence because he is afraid that his criminal record will come to light, which will result in his conviction. He is content to gamble on an acquittal on what he thinks is the Crown's weak case. When this happens, the magistrate should call the accused to the witness-box (he should not be sworn at this point) and ask him if the reason he is declining to give evidence is because his criminal record will come out. If he says that is so, the magistrate should explain that he will decide the case on the merits alone and completely ignore the criminal record if it is brought out, and point out that weak as the Crown's case is, he will be obliged to convict in the absence of any evidence on the accused's behalf. The

accused will generally agree to give evidence, and it usually follows that his evidence is sufficient to warrant dismissal of the case.

OBSTREPEROUS OR VIOLENT ACCUSED PERSONS

While it is axiomatic that the accused (if being tried on an indictable offence) must be present for the whole of his trial, and further, should be made aware of what is going on, so that he will understand what is happening, it sometimes happens that an accused person conducts himself in an obstreperous or violent manner. This is much more often true of women than men. A magistrate should do all he can to calm such a person, but if he doesn't succeed and he doesn't want to invoke contempt of court proceedings, the sensible thing to do is to remand the accused in custody without bail for a few days, warning him to behave himself the next time he comes before the court, or the remand will be for a still longer period, and so on until he learns to behave himself. One remand is usually sufficient.

ONLY THE EVIDENCE SHOULD BE CONSIDERED

This is another axiomatic rule, but should be followed religiously. It is altogether possible that you have read newspaper reports of the commission of the offence, the arrest of the accused and so on, with a good deal of extraneous matter prejudicial to the accused that is not put before the court when the case is tried. In such a case, a magistrate should do his best to put the extraneous matter completely out of his mind in coming to a decision as to guilt or innocence.

JUSTICE DELAYED IS JUSTICE DENIED

A magistrate should be alert to see to it that cases he has to try should not be remanded or adjourned for a long time. Not that an accused should be hurried into making his plea or election for trial; on the contrary, on his first appearance, it should be ascertained that he knows and understands the charge or charges against him; he should be fully apprised of his right to remand or adjournment (practically automatic, the first time up), his rights with respect to mode of trial and in those communities where the facility exists, to free legal aid.

If counsel are in the magistrate's court appearing on behalf of other accused, the magistrate should ask one of them to instruct such an accused fully; if not, the magistrate should do so. Counsel for the prosecution should not be asked to do so; the accused regards him as a mortal enemy, sworn to undo him.

While a magistrate should do all he can to see to it that a case is heard as expeditiously as possible, he should not be so capricious that he ignores valid reasons for a remand or adjournment. If he does, he will likely find that any conviction he registers will be quashed by the Court of Appeal and a new trial ordered.

CHAPTER VII

THE DUTIES OF CLERKS OF MAGISTRATES' COURTS

INTRODUCTION

Every properly appointed Magistrate's Court should have a Court Clerk, a Court Reporter, sufficient ushers to maintain order and enough police officers to see to it that all accused in custody remain in custody until they are released or delivered to other custodial officials.

The most important of these functionaries, by far, is the Court Clerk, and the magistrate must depend on him for the smooth yet dignified operation of the court's processes. If the magistrate has a good Court Clerk, he has a good court; if the Court Clerk is inefficient, the impression on the public will be that the Court is inefficient, whether that be so or not.

Ideally, the prosecution of all offenders, whether for crimes, violations of Provincial statutes, by-law violations, traffic offences or whatever comes before a magistrate for trial, should be handled by Crown counsel who are members of the Bar. The uninformed public still refers to Magistrates' Courts as "police courts", although in Ontario, that objectionable nomenclature was abolished as long ago as 1923. It does not help to educate them to see prosecutions handled by police officers, members of the same force that brought about their arrest or summons to court and who, it is widely thought, have a deep and abiding interest in an accused's conviction. Nor does it impress them with the integrity and independence of the court; they have often heard that "your word is never as good as a cop's", and when police officers testify against them and another police officer prosecutes them, they can hardly be blamed for thinking that the dice are loaded against them before the game starts.

However, the Utopia here dreamed of is in all probability a long time away, so in the meantime, we must get along as best we can with the existing system.

An efficient Court Clerk, in court, does not call upon the magistrate to sign or initial anything except to initial an amendment to an Information and to sign the document that records the disposition of the case and, if the disposition is a remand in custody or a term of imprisonment, the warrant of committal.

THE COURT CLERK'S DUTIES BEFORE COURT OPENS

1. He should be provided with (or if the organization of the court does not permit, he should provide himself with) a list of the cases to be tried at the court's session.
2. He should obtain all remand Informations from Records. All remand Informations should be looked at, and if it is recorded that there are exhibits, they should be collected and taken into court.
3. He should obtain all new Information from the appropriate police officer.
4. He should obtain bail bonds for each case, if they exist, and fold the bail bonds in with their respective Informations.
5. As he does what is required in paragraphs 2 and 3 hereof, he checks off the cases on his list of cases to be tried until all cases are checked off.
6. Any cases not checked off will in all probability be accounted for by arrests made during the previous night, and the Informations will be produced by police officers in court. If, as court is about to close, there are still cases not checked off, the magistrate should be asked to order a short recess and the Court Clerk should make enquiries until the missing Informations have been found.
7. All cases on the court list should be entered on the magistrate's Court Calendar, and the following information should be recorded beside the name of each accused: date of first appearance in court on the current charge, country where born, marital status, age, name of complainant and arresting officer, and any other information the magistrate may require.

8. The magistrate's Court Calendar should be completed by writing on it the names of the magistrate and the Court Clerk.
9. If the magistrate wishes, the Court Clerk will call upon the magistrate at a specified time before court to discuss the day's cases with him.
10. At least five minutes before court opens, the Court Clerk shall be at his place in the court-room. He shall see to it that the floor of the court-room has been well swept, the furniture in court is arranged correctly, the court-room is neat and tidy, properly heated (or air-conditioned, if the court has air-conditioning), lighted and ventilated. The bench should be cleared of everything except the Court Calendar, a Bible, a blotter, a pitcher of ice-water and a clean drinking glass, unless the magistrate wishes something more. The magistrate's chair should be pulled back for easier seating and no other chair should be behind the bench. The Court Clerk should see to it that the Court Reporter is in his seat before court opens.

All lawyers, police officers, reporters and spectators should be in the court-room well before the magistrate enters.

OPENING OF COURT

When a magistrate enters, the Court Clerk should rise and clearly announce: "Order, please! Stand up!"

It is not unusual for counsel or police to continue talking as the magistrate goes to the bench to take his seat. They should be promptly suppressed by the Court Clerk who will look at them and say: "Order, please! Stop talking!"

A Court Clerk must remember that in enforcing order, he speaks with the magistrate's authority. It is, in effect, the magistrate's voice that is enforcing order.

Many magistrates before taking their seats bow to counsel; counsel should, of course, return the bow. Many, however, do not. Such counsel should later be instructed on proper court-room decorum by the Court Clerk.

After the magistrate has taken his seat, the Clerk should announce: "The Magistrate's Court for the County of (as the case may be) is now in session. God Save the Queen!"

GENERAL ORDER

The Court Clerk suppresses, and sees to it that police officers on court duty suppress laughter, gum-chewing, reading books or newspapers and talking in court. An infant crying or about to cry should be quickly detected by police officers on court duty and the mother of the infant should be asked quietly and politely by a police officer to leave the court-room for the time being. If the police do not take prompt action, the Court Clerk must.

People speaking, or trying to speak, to the magistrate from the body of the court, should be promptly suppressed by the Court Clerk, who will say to them: "Order, please! Come forward, please, and speak to the Crown Attorney", or whoever is responsible for seeing to it that what he has to say to the court will be said in a proper and orderly manner, i.e., from the witness-box.

It is very difficult, particularly in urban centres or in crowded court-rooms, to enforce absolute order. Lawyers, police officers, reporters and spectators will leave and enter the court-room so often that it sometimes seems that any kind of order is preferable to none. In this way, the Court Clerk should act as the magistrate directs. Some magistrates permit people to leave only between cases or between witnesses; this is excellent, if there are sufficient police officers on court duty to enforce such a practice.

ARRAIGNMENT

The Court Clerk stands on arraignment, keeping the view between the magistrate and the accused unobstructed. He waits for perfect order before addressing the accused. He does not lean on or against the bench. He speaks slowly, clearly and impressively and not in a casual, nonchalant manner or in a slurred or sing-song voice.

The Court Clerk will, of course, have familiarized himself with those offences which are triable summarily by a magistrate

and those where the accused is entitled to be tried by a judge or judge and jury. (Code secs. 467, 468.) He will also have familiarized himself with those offences a magistrate cannot try. (Code sec. 413.)

The Court Clerk shall also familiarize himself with:

- (a) Election under Part XVI (Code sec. 468 (2));
- (b) Warnings under *The Highway Traffic Act*, and when these warnings are necessary (*Highway Traffic Act* secs. 111 (2) (b) and 157 (3) (b));
- (c) Those offences where the Crown has the right to elect to proceed by indictment or summarily. They are:

<u>OFFENCE AND CODE SECTION</u>	<u>PENALTY CODE SECTION</u>
Various, covering firearms, 90 (1) to (8) inclusive.....	90 (9)
Various, obscenity, etc., 150, 151, 152, 153.....	154
Providing necessities of life, 186 (1) and (2).....	186 (3)
Criminal negligence, motor vehicle, 221 (1).....	221 (1)
Failing to stop, accident, 221 (2).....	221 (2)
Drunk driving or in charge, 222.....	222
Driving impaired or in charge, 223.....	223
Failing to safeguard dangerous place, 228 (1) and (2).....	228 (2)
Common Assault, 231 (1).....	231 (1)

Sending threatening letter, 316 (1) (b).....	316 (3)
Forgery of trade marks, etc., 350, 351, 352, 353, 354.....	355
Secreting, etc., wreck, 358 (a) (b) (c) (d) (e).....	358 (f) and (g)
Destroying, etc., distinguishing marks, 360.....	360 (2)
Receiving, etc., military stores, 363.....	363
Criminal breach of contract, 365.....	365 (1) (f) and (g)

For the magistrate to acquire jurisdiction in a case where an accused has a right of election, the accused must clearly say—not merely indicate—that he wishes to be tried by the (or a) magistrate. It is not enough for the accused to say: “By the judge today”, as so many do. In such case, the Court Clerk should ask: “Do you mean you wish to be tried by a magistrate?”

When it is quite clear that the accused intends to be tried by the magistrate, the Court Clerk turns to the magistrate and says: “The accused elects to be tried by a magistrate.”

Then the accused is asked, in reference to each charge: “How do you plead, guilty or not guilty?”

After the accused has pleaded to all charges, the Court Clerk turns to the magistrate and says: “The accused pleads guilty to the first, seventh and ninth charges and not guilty to all others,” or as the case may be.

The trial then proceeds, during which the accused may be seated. If, however, he has not been provided with a seat or chair, or continues to stand, the Court Clerk should say: “The accused may be seated,” when a police officer on court duty will find him a seat.

THE PRELIMINARY INQUIRY

At the conclusion of the Crown's case, unless the magistrate discharges the accused, the Court Clerk shall address the accused as required by sec. 454 of the Code. It will be noted that the section provides that "the justice" shall address the accused, but it is perfectly proper for the Court Clerk to do it on the magistrate's behalf.

Often an accused person or his counsel will waive the taking of evidence on a preliminary inquiry. In such case, the warning will commence: "Having waived the evidence . . ." instead of: "Having heard the evidence . . ."

If the accused wishes to make a statement, he is heard, when the Court Clerk asks him: "Have you any witnesses to call?" If he has, they are heard.

The magistrate then makes his disposition of the preliminary inquiry.

SWEARING WITNESSES

The Court Clerk asks a witness his full name and if the witness replies indistinctly or in a low voice, the Court Clerk repeats it sufficiently loudly for the magistrate and Court Reporter to take it down. If a witness has gloves on, he is requested to remove his right glove.

The method of swearing witnesses in Ontario Magistrates' Courts varies widely and in the interests of uniformity, it is recommended that the universal English practice be adopted. It has already been adopted by some Ontario magistrates.

The oath is typewritten, couched in the first person, and is placed in a transparent case. The Court Clerk tells the witness to take the Bible in his right hand and the case in his left hand and read the oath.

In criminal cases, the oath is:

"I swear that the evidence to be given by me to the court, between our Sovereign Lady, the Queen and the prisoner at the bar, shall be the truth, the whole truth and nothing but the truth, so help me God."

In all other cases, the oath is:

"I swear that the evidence I shall give to the court, touching the matters in question, shall be the truth, the whole truth and nothing but the truth, so help me God."

Orthodox Jews are sworn while wearing headdress and instead of "So help me God," the oaths should read: "So help me Jehovah." Orthodox Jews are sworn on the Old Testament, and an ordinary Bible may be used unless the witness is particularly fastidious, in which case, the Bible shall be divided between New and Old Testaments, with the witness holding only the Old Testament.

Witnesses who refuse to be sworn affirm as follows:

"I solemnly affirm that the evidence to be given by me shall be the truth, the whole truth and nothing but the truth." The Bible is not used, the witness holding up his right hand instead.

It should be noted that it is not sufficient for a witness merely to state that he refuses to be sworn. He should state why; that is, for religious or conscientious reasons, or as the case may be.

Magistrates in urban courts or in places where many witnesses cannot speak English may find this practice too cumbersome and time-consuming. In such cases, the oaths and affirmation should be similarly typewritten but couched in the second instead of the first person and read to the witness by the Court Clerk.

A witness is not sworn until there is absolute silence in court.

After a witness is sworn, the Court Clerk recovers the Bible from him and puts it in its usual place.

EXHIBITS

All exhibits should be marked by the Court Clerk as they are admitted in evidence by the magistrate. A counsel will sometimes say: "May the document (for example) be marked as Exhibit 6 for identification, Your Worship?" This means

counsel has not sufficiently proved its connection with the case, but intends doing so later. Such exhibits should be marked by the Court Clerk just as the proved exhibits are.

The method of marking exhibits varies from place to place and court to court. Some courts number their exhibits 1, 2, 3, etc.; others letter them A, B, C, etc. Others use the American system: C-1, C-2, C-3, etc., for Crown exhibits and D-1, D-2, D-3, etc., for defence exhibits. In the interest of uniformity it is suggested that exhibits be marked in numerical order.

After an exhibit has been marked by the Court Clerk, it should be passed for scrutiny to the opposing counsel, and after he is through with it, to the magistrate.

After court, the Court Clerk takes the exhibits to the Exhibit Custodian, if the court has such a functionary; otherwise, he is responsible for their custody from one court session to another. After a case is finished, the Court Clerk disposes of the Exhibits as the magistrate directs; they must, in any case, be kept safe until the time for appealing the case has elapsed.

In the case of narcotics and liquor, the R.C.M.P. and some local police forces are instructed to take possession of all such exhibits from one court session to another and after the case has been disposed of. It is at least doubtful if they have the power to do that, but as the practice has worked very well where it is in vogue, no objection should be made to it.

In both cases, that is, where the exhibits are delivered to an Exhibit Custodian or to a police officer, the Court Clerk should have written receipts for the exhibits he delivers. He will find it convenient to keep an Exhibit note-book for this purpose.

It should be repeated here that the magistrate should not be bothered by having to sign or initial exhibits.

YOUNG PERSONS

If an accused person looks as though he might be under 16 years of age, the Court Clerk asks how old he is; if he says he is 16 or over, the Court Clerk should ask him when he was

born. The magistrate will take over from there, whatever the answers are.

If a prospective witness looks as if he might be under 14 years of age, the Court Clerk asks the same questions, as if he is under 14, the magistrate must satisfy himself that he understands the nature of an oath. If the magistrate so satisfies himself, he will direct the Court Clerk to swear the witness.

GENERAL ORDER

The Court Clerk shall see to it that male counsel remove their topcoats before speaking to the court.

All accused and witnesses, except police officers and persons in the armed services, should be addressed as Dr., Mr., Mrs. or Miss, as the case may be. Others should be addressed by the ranks they hold.

A Court Clerk should never refer to "drunks", "vag.s" or "found-ins". Instead, he should say: "Those charged with public intoxication (vagrancy, being found in a (as the case may be)).

The names of counsel appearing in a case are ascertained as quickly as possible and are legibly entered on the Information and if the Court Clerk thinks that counsel's name is unknown to the magistrate, he should pass the Information to the magistrate before he does anything else.

The Court Clerk should see to it that anyone stands when the magistrate is addressing him and that the accused stands when he is cross-examining, making a statement to the court, and when the magistrate is about to announce his disposition of the case.

Counsel must be prevented from speaking to the magistrate confidentially before, during or after a case in which they are engaged or at any time if the court is in session. *It is impossible to exaggerate how bad this looks to the public.*

Court Clerks should be fastidious about the correct pronunciation of English words. Words commonly mispronounced

by Court Clerks are: *address, adult, recess, genuine, remand and summarily.*

Accused persons should be promptly discouraged from appearing with hands-in-pockets, pencils or cigarettes over their ears, leaning on the wall, rail, bench, etc. Witnesses should stand erect in the witness-box and not slouch or lean on the bench. They should not place hats, bags or parcels on the bench.

If possible, every person in the court-room shall be seated and to-and-fro movement kept to a minimum.

Smoking should not be permitted in court-rooms during recesses.

When the magistrate orders a short recess, the Court Clerk should announce: "Order, please! Stand up, please!" And when all are standing and there is perfect silence, "This court stands adjourned for ten minutes. God save the Queen!"

Interruptions, laughter and other disorderly conduct should be dealt with by the Court Clerk most expeditiously. If a Court Clerk performs his duties with efficiency, *it should never be necessary for the magistrate personally to enforce order at any time.*

After the magistrate has pronounced sentence, the Court Clerk, not necessarily rising to do so, repeats the sentence of the court in a loud and clear voice so that everyone in the court-room is sure to hear what it was.

It will often happen after an accused has been remanded or sentenced, his counsel will speak to his client in the prisoner's dock. A short conversation between them is not objectionable, but if it lasts so long that it is continuing by the time another case has started, counsel should be told to continue his conversation with his client elsewhere, and the accused should be forthwith removed to the cells.

The Court Clerk should never use the bench on which to fill in any form or do any writing.

DRESS IN COURT

The magistrate will doubtless be robed in the approved magistrate's gown, wearing striped trousers, for his court appearances. The Court Clerk, for his court appearances, should wear clothes of conservative hue and cut, and preferably, a white shirt and conservative tie. Flamboyance in clothing, of any kind, should be carefully avoided. Blazers or sports jackets should not be worn by a Court Clerk in court, and while waistcoats may be dispensed with, particularly in the summer months, they should not be replaced with sweaters or fancy waistcoats at any time of the year.

As for the dress of police officers, if they are in uniform, they should wear their caps in court at all times, unless and until they are called as witnesses, when the caps should be removed. If they are in plain clothes, they should wear a jacket and tie. If they offend, they should be informed *after* court that they have offended, and requested not to do so again. If necessary, if such offences are common or repeated, a letter from the magistrate to the local Chief Constable will have the desired effect.

Male newspaper reporters and copy-boys should be told that they are expected to wear jackets and ties in court, and anyone who ignores the Court Clerk's instructions should be reported to the magistrate for his corrective action.

As for spectators, female newspaper reporters and accused persons, some judges and magistrates insist on all of them being correctly attired; men with jackets and ties; and women with hats on as in church. In magistrates courts, particularly during the summer months, a magistrate who attempts to enforce such niceties in dress has a job comparable to the cleaning out the Augean Stables. However, police officers can be requested to see to it that accused persons are at least presentable for court. No accused man, for example, should be without a shirt, nor should he appear with his shirt unbuttoned to the waist.

(In this connection, not so long ago, a Toronto magistrate observed out of the corner of his eye, as he entered the courtroom, an accused man peeling off his shirt and by the time he

had taken his seat behind the bench, the accused had dropped his trousers, standing stark naked before the magistrate.

(The magistrate, unruffled, called upon the Crown Attorney to proceed with the accused's case at once, and after hearing as little evidence as possible, he committed him to The Ontario Hospital for a period not exceeding 60 days. It is not thought that he ever came out.)

However, should an accused appear improperly dressed, he should be sent back to the cells (or outside the court-room, as the case may be) to dress himself properly.

So far as counsel are concerned, many of them appear in bizarre costumes, but beyond requiring them to wear a jacket and tie, nothing more, it seems, should be done, whether they appear in blazers, sports jackets, windbreakers, or with fancy waistcoats or sweaters. They should know better, but apparently, they don't. If the magistrate feels that something should be done about it, it is his problem, not the Court Clerk's, unless he tells the Court Clerk to enforce his orders in the matter.

DURING RECESS

In urban centres, one magistrate will often finish his list and take a short recess, so that cases may be taken from a more heavily-burdened court. The Crown Attorney will make such arrangements, but the Court Clerk should get the Informations, and enter the names of the accused with all pertinent data on the Court Calendar.

CLOSING OF COURT

As the magistrate announces his disposition of the last case on the list, there is a natural tendency for all those present in court to leave at once. The Court Clerk should check the threatened exodus by announcing: "Order, please! Keep your seats until court is adjourned, please."

After the disposition of the last case, the Court Clerk has to complete the Information, noting its disposition, and the magistrate has to sign it. In addition, there may be a colloquy between the magistrate and the Crown Attorney about another

case, or when the magistrate will sit again, or perhaps the accused or his counsel will want time to be granted for payment of a fine, or some similar matter will slightly delay the adjournment of court. When all such matters have been attended to, the magistrate will indicate to the Court Clerk that he wishes the court adjourned when the Court Clerk will announce: "Order, please! Stand up, please!" And, then, when there is perfect silence: "The Magistrate's Court for the County of (as the case may be) stands adjourned until tomorrow morning at ten o'clock (or as the case may be). God save the Queen!" The magistrate will again bow to counsel, and counsel should return the bow.

PROBATION OFFICERS AND PRE-SENTENCE REPORTS

Every well-appointed court should have sufficient probation officers assigned to it to prepare all pre-sentence reports required by the magistrate and supervise convicted persons placed on probation. The authorities are moving rapidly in that direction, and it will not be long before all courts in Ontario are adequately so equipped.

Probation officers were once required to attend court but now, due to the shortage of them in all courts, they do not attend unless the magistrate requires their presence or when they are required as witnesses on a charge of breach of probation.

Instead, the Court Clerk is supplied by them with forms which it is his duty to complete for the magistrate's signature in every case where the magistrate orders a pre-sentence report or where the magistrate suspends sentence and places the offender on probation. When signed, the forms are delivered to the Probation Officer who acts as he is required to do.

If the magistrate has decided to suspend sentence, it is not necessary for the convicted person to see the pre-sentence report but if the magistrate intends to fine the accused or sentence him to a term of imprisonment, the Court Clerk should see to it that the accused reads the pre-sentence report before he is sentenced. When the accused is called upon for sentence, the magistrate (or the Court Clerk, if the magistrate so directs)

asks the accused: "Have you read the pre-sentence report with respect to your case?" When the accused answers "Yes", he should then be asked: "Is there anything in it that you question or deny?" If the accused says "No", the magistrate will then sentence him. If, however, he says: "Yes", he should be asked what it is he questions or denies, and if it is something quite unimportant, as it so often is, the magistrate will probably say: "I accept your statement as being true," and then sentences him. If, however, he questions or denies something of importance—something, for example, that would affect the sentence if what he says is true—he should be asked: "Would you like to ask the Probation Officer any questions?" and if he would, the case is remanded for a day or until such time as the Probation Officer can be produced for cross-examination by the accused.

If the matter is still unsettled, as it may well be, since virtually all the pre-sentence report is hearsay, the accused should be asked if he wishes to ask any of the Probation Officers' informants (on the disputed points) any questions. If he does, they too should be produced for cross-examination by the accused before he is sentenced.

All this may not be law at the moment, but it is considered that it will be law if such matters reach a Court of Appeal. The British Columbia Court of Appeal has already decided that an accused should see his pre-sentence report before being sentenced to imprisonment but it is not thought that their decision goes far enough, so far as pre-sentence reports are concerned.

However, in such matters, as in all others, the Court Clerk will act as his magistrate may direct.

ASSISTING THE MAGISTRATE OUT OF COURT

No magistrate should discuss a case he has yet to try with anyone, least of all anyone concerned in the case. He may, however, see counsel, provided both counsel for the Crown and the accused are present.

Attempts will often therefore be made through the Court Clerk to see the magistrate, and the Court Clerk should seize upon the opportunity to explain to anyone making such an attempt how very improper his actions are and why they are. Word of such a thing gets around quickly and the Court Clerk thus enhances the public opinion, not only of the magistrate, but in the fairness and independence of the administration of justice generally.

TIME TO PAY FINES

Many magistrates give time to pay fines and no matter how short a time is requested by the accused, the minimum time to pay must be 14 clear (i.e., 15) days. (Code secs. 622 (6) and 694 (5) as amended by S.C., 1959, Chap. 41, secs. 27 (6) and 31 (5)). But no matter how much time is granted, shortly before that time elapses, the accused will appear to ask for more time to pay. This is time-consuming for one thing, and does not add greatly to the dignity of a magistrate's office, for another. The impersonality that had existed before between the accused and the court degenerates into a personal relationship.

A useful method of solving the problem has been adopted by some magistrates. They empower their Court Clerks to deal with such matters, so that when an offender calls upon the magistrate, he simply says: "I'm very sorry; I do not deal with such matters; would you be good enough to see Mr. (Court Clerk)?" And beforehand, the Court Clerk has been instructed to give the offender such further time within which he may reasonably be expected to pay the fine and wait another seven days before the warrant of committal is issued. The Court Clerk should tell the offender that he must expect to serve the time if he cannot raise the amount of the fine within the extended period.

CHAPTER VIII

LIMITATIONS OF INITIATING CRIMINAL PROSECUTION

Generally speaking, there is no limitation on the initiation of a criminal prosecution; if a crime has been committed, an information can be laid and the matter may proceed to trial many years after the offence has been committed. There are, however, some exceptions. There follows a short table of such offences as have a limitation of the time for prosecution, and after the offence, the time limit within which prosecution must be launched.

<u>OFFENCE</u>	<u>TIME LIMIT</u>
Summary conviction offences.....	6 months (Code sec. 693 (2))
Seduction, 16-18 (Code sec. 143).....	1 year (Code sec. 133)
Seduction, promise of marriage (Code sec. 144).....	1 year (Code sec. 133)
Seduction female employee (Code sec. 145 (b)).....	1 year (Code sec. 133)
Parent or guardian procuring or receiving avails (Code sec. 155).....	1 year (Code sec. 133)
Householder permitting inter- course with girl 18 or under (Code sec. 156).....	1 year (Code sec. 133)
Corrupting children (Code sec. 157).....	1 year (Code sec. 133)
Treason (Code sec. 46 (1) (d)).....	3 years (Code sec. 48 (1))
Treason, spoken (Code sec. 47).....	6 days (Code sec. 48 (2))

CHAPTER IX

"I WANT TO KNOW"

Before undertaking the job of writing this manual, I circularized all magistrates in Ontario and asked them if there were any particular matters they wished discussed. Their replies were of incalculable assistance to me and about all I have done in preparing the manual for publication is answer their questions to the best of my ability. In this Chapter, then, I shall set out some of their questions and attempt to answer them.

WHAT SHOULD THE HOURS OF COURT BE?

A magistrate sets the hours of his court to convene and adjourn and convenient hours seem to be from 10.00 a.m. to 12.30 p.m. and 2.00 p.m. to 4.30 p.m., with a recess of 15 minutes about half-way through each session. The court sessions should not be any longer, and the common practice of continuing a court session until nearly midnight, with a short adjournment for dinner, cannot be too strongly depreciated.

In the first place, all court functionaries, including the magistrate, have things to do before and after court hours. They are entitled to an hour-and-a-half for lunch, particularly the Court Reporter, whose court duties are more arduous than any other's—far more arduous than the magistrate's—even though the magistrate conscientiously takes his own notes of the trial in approved or his own invented shorthand.

Secondly, unless the magistrate is some kind of a genius, which most are not, it seems, and many judges have said so, that about the limit of concentrative ability for a judge or magistrate is an hour and 15 minutes. A single word might be missed by a magistrate which would make the difference between acquittal and conviction. It should not be necessary to take the chance by imposing long hours on the court functionaries and yourself.

If a list or a case cannot be finished in the appointed court hours, the case or cases will simply have to be remanded or

adjourned to another day. All court officials will be very pleased to find that the court operates on a strict schedule and that no exceptions will be made to it. Insisting on such a schedule will cause hardship to witnesses and possibly cause inconvenience to the prosecution and counsel for the accused whose cases are put over to another day, but it is infinitely more important that all measures be taken to see to it that justice be done rather than suit the convenience of any individual concerned with the case.

As the magistrate sets the hours of court, he should walk into the court as the hour strikes. There is absolutely no excuse for a magistrate to be late at the opening of court. If he is 20 minutes late, for example, he has already created an atmosphere of hostility on the part of everyone in the court-room.

But if he is only a few minutes late, and thinks he has a valid reason for his lateness, it is only simple courtesy for him to apologize, at least to counsel, or the prosecuting officer, if there are none, assigning what he thinks are his valid reasons.

The late Magistrate (Colonel) George Taylor Denison, a magistrate in Toronto for 40 years, in his *Recollections of a Magistrate*, said that although his home was 30 minutes' walk from the City Hall, winter or summer, snow, ice or hail, on not one occasion did he fail to walk into the court-room on the tenth stroke of ten o'clock.

I didn't believe him, either.

SHOULD A MAGISTRATE DISCUSS A CASE YET TO BE TRIED BY HIM?

Not with anyone. Not with Crown Counsel, not with a police officer, not with the accused or his counsel, *not with anyone*.

It is impossible to exaggerate how bad such a thing looks to the public who becomes aware that the local magistrate is approachable. "Approachable" is a word of more than one meaning to various segments of society and the criminal classes of the country firmly believe that all you need is enough money to take care of the magistrate and the prosecutor so that a case can be "fixed".

Such a belief is not dispelled by a magistrate who will discuss with all comers, or even with any, a case he has yet to try.

A magistrate should tell such people, whether lawyers or not, and many lawyers keep on trying, "I am very sorry; I do not discuss cases I have yet to try in my office; if you have anything to say to me, it must be said in open court."

Nine times out of ten, this will be followed by: "Yes, but—" and a magistrate must cut his caller short, even to the point of such firmness that it might appear to his caller that he is rude. Now and again, before the magistrate can stop him, the caller will have told him something he should not know, for example, that the accused he is going to try has a criminal record. As a magistrate must not try anyone who he knows has a criminal record (or if he does, it is enough to quash a conviction on appeal), he should announce when the case is called in court: "I was improperly approached by counsel for (the mother of, or as the case may be) the accused, who told me before I could stop him, that the accused has a criminal record, which of course makes it impossible for me to try the accused. He will therefore be tried by another magistrate." And arrangements should be made to have him so tried.

To magistrates of long experience in small communities, this will sound fatuous. In small communities, the local magistrate not only knows everyone in the community; he also, in all probability, knows their criminal records off by heart, since he has been responsible for them.

Oddly enough, that doesn't matter, in law. Even in urban centres, when a magistrate has convicted an accused who, to the best of his knowledge he has never seen before, the admitted criminal record of the accused will be passed to the magistrate who, as he reads it, much to his surprise, will see a number of items recording that he himself was the convicting magistrate.

WHEN CAN I ORDER COURT CLOSED?

All cases should be heard in open court, unless the magistrate decides that a certain case should be heard in closed court.

He has not the power to order a closed court on his own discretion; he is bound by secs. 427, 428 and 451 (j) of the *Criminal Code* in making such an order.

However, because of local circumstances, it often happens that the only available court-room is occupied by a judge and it becomes necessary for the magistrate to sit in his office or some place or office not properly accounted as a court-room.

In such case, it is perfectly proper for the case to proceed, so long as either of two things are done: a sign should be hung on the outside of the door reading: "Court is Open; Walk In", or the door should be kept wide open during the hearing.

But it is not unusual for a magistrate, in the middle of a case, to say: "We shall have a short recess now, and I should like to see counsel in my room," or, if the accused has no counsel, he will ask a police officer, if the accused is in custody, to bring the accused to his room. If, of course, it is a summons matter, the accused will come along with counsel for the Crown. Possibly a magistrate would better protect himself if in such a case, he asked the accused to be present in any event, whether he has counsel or not, so that sec. 451 (j) of the *Criminal Code* could be fully complied with, but the individual magistrate should be the judge of that.

Because the magistrate's purpose in asking to see counsel is because, in all probability, he has sensed that the case has more civil overtones than criminal. Such a case, for example, would be one where the accused passed a cheque returned for insufficient funds. Another would be a fraud charge where an accused has taken money and agreed to do certain work and the work has not been done. Irrespective of criminal liability, everybody will be happy if the complainant gets his money back and the accused can be remanded or the case adjourned for a sufficiently long time to enable him to make restitution. If and when he does, Crown counsel will undoubtedly agree to ask the magistrate to withdraw the charge. Thus a good deal of time is saved for all concerned and everybody is satisfied that justice has been done.

A magistrate will sometimes be approached and urged to hear a particular case, involving a prominent member of the community, behind closed doors. Such a thing should never be contemplated, far less done, even with the safeguards outlined above.

HOW MUCH SHOULD A MAGISTRATE SAY IN COURT?

Not very much. In this connection, the old adage is recalled: "It is better to say nothing and be thought a fool than to open your mouth and remove all doubt."

A magistrate will be quick to suppress counsel asking improper questions, because under our system of law, unlike the American system, nothing said at a trial can be erased or stricken from the record. Once something is said, no matter how improper, it is part of the record. Many magistrates, however, do say: "The answer is inadmissible, and I order it stricken from the record." And they do this, knowing full well that they have no such power. Why they do it is purely for psychological reasons; they know they must ignore it in adjudicating on the case and in doing so, they protect themselves by saying, for example: "Mr. Doe, in cross-examination, said that he heard his mother-in-law say that she saw the accused in the store at the time of the holdup. This evidence was objectionable because it was hearsay, and I have done the best I can in putting it completely out of my mind in deciding this case."

An improper question, quite often put, particularly to a female witness, is "How old are you?"

Even in sexual cases where it is necessary to prove the age of the female involved, this is an improper question, because no one knows how old he or she is; while he or she was undoubtedly there at the time, the memory is bound to be faulty. So the age of anyone must be proved by his mother, who was also undoubtedly there and whose memory is undoubtedly quite sound; of the father, if he can first establish he was close by when the birth took place; and in some cases, by another who was likewise close by and has been on intimate terms with

the family ever since. When *you* say you are a certain age, you are obviously giving hearsay evidence, which is objectionable.

But in ordinary cases, when counsel asks a female witness how old she is (when her age has nothing to do with the case), what he is trying to do is get her to under-estimate it by a few years; later, he will establish, perhaps by her birth certificate or some other way, that she is actually five or ten years older. Hence, she perjured herself, and is not to be believed. He will then bring forward the well-known legal maxim, *Falsus in uno, falsus in omnes* (False in one thing, false in all).

It may be a legal maxim, but it is not law. If a woman lies about her age, it is wholly probable that that is the only thing she ever lies about.

Once a magistrate hears counsel ask a female witness: "How old are you?" he should say to the witness: "You don't have to answer that question, Mrs. Smith."

And similarly in all other improper questions, and the magistrate must sometimes act quickly, before the witness's answer gets into the record.

A magistrate should never interrupt counsel or for that matter, anybody, in court unless such a person is behaving badly and his improper behaviour should be corrected.

As a case proceeds, counsel will make objections from time to time, and the magistrate should see to it that such objections are made in an orderly manner, and prevent opposing counsel from interrupting the objecting counsel. The objection is heard, and the opposing counsel is given full opportunity to answer to the objection. Objecting counsel may have something further to say. He should be heard. Then the magistrate gives his ruling, for example: "Yes, Mr. Smith, I think the question is leading and I think you should phrase it in another way," or "I do not see anything objectionable about the question; the witness may answer," or as the case may be.

It is well-settled law that a magistrate (or a judge, for that matter) may not cross-examine a witness. It was long ago laid down by a judge who was notorious for his cross-examination,

to say nothing of badgering witnesses, that a judge or magistrate can ask a witness a question only if he asks him to explain something that was ambiguous or to repeat something the judge or magistrate did not hear. But on the other hand, see *Regina v. Muggli*, 131 C.C.C., 363 at 369, where Mr. Justice Norris of the British Columbia Court of Appeal reviews the authorities.

But a magistrate who, perhaps, was a skilful cross-examiner at the Bar, will hear an accused who he thinks is a consummate liar, and he will be disappointed by rather weak cross-examination. He becomes sorely tempted to take over the cross-examination himself, and sometimes, alas! does so. He even knows he shouldn't! But he just can't resist the temptation.

And he so relentlessly cross-examines the lying accused that he finally leaves the box branded by the magistrate as the perjurer he quite obviously is, and is accordingly convicted, the magistrate being so proud of himself, as he recalls his great days at the Bar when he won just such a case by brilliant cross-examination, that he tacks on another year to the sentence he first had in mind and proudly tells his wife all about it that night when he gets home.

Two or three months later, he reads in the paper: "Conviction quashed by the Court of Appeal".

Where there has been a plea of not guilty, after all the evidence is in, the magistrate has probably made up his mind whether to acquit or convict. If he has decided to convict, he should ask counsel for the accused for his argument, or if the accused has no counsel, he should ask the accused if he has anything to say by way of argument why he should not be convicted.

If either argument sways him from his original opinion as to the guilt of the accused, he should ask the prosecution to present its argument.

If, on the other hand, the magistrate has decided to acquit the accused, he should ask the prosecution for its argument and again, if the argument sways him from his original opinion, he should ask the accused or his counsel for argument in rebuttal.

Then and only then should he announce his judgment, and he should be careful to give his reasons for judgment. There are two reasons for this: it should be clear to everyone in the magistrate's hearing that justice has been done, and it is useful to the Court of Appeal in the event of an appeal.

The temptation to toss off *bon mots* for a magistrate who has a highly developed sense of humor is almost irresistible at times. It should be resisted at all costs. Whatever a magistrate may think is funny may be very comical indeed to everyone in the court-room—to everyone but one, that is. Be assured that the accused will not be able to find anything funny about it, at all.

In this connection, Ko-Ko's words in *The Mikado* come to mind:

"As some day it may happen that a victim must be found,
"I've got a little list—I've got a little list
"Of society offenders who might well be underground,
"And who never would be missed—who never would
be missed!
"And that Nisi Prius nuisance, who just now is rather rife,
"The Judicial Humorist—I've got *him* on the list!
"They'd none of 'em be missed—they'd none of 'em be
missed."

A magistrate, therefore, should say just as little as he possibly can in court; when he says more than he should, he will invariably regret it later.

SHOULD A MAGISTRATE ACCEPT CHRISTMAS PRESENTS?

A magistrate should not accept presents of any kind from any lawyer or anyone with whom he has business to do as a magistrate, nor should he accept hospitality unless he intends to return it. A magistrate is very unwise if he asks a favour of anyone; if the favour is granted, the favour-doer, as sure as death and taxes, will turn up a few months later with a speeding summons he wants "fixed", and if you don't do him a little favour for the big one he did you, you're an ingrate.

IS IT PROPER TO USE A TAPE RECORDER TO TAKE EVIDENCE?

Only for the purpose of assisting a court reporter. Code sec. 453, as amended by S.C., 1960, Chap. 37, sec. 2, now reads in part: "... the justice shall ... (b) cause a record of the evidence of each witness to be taken ... (ii) in a province where a sound recording apparatus is authorized by or under provincial legislation for use in civil cases, by the type of apparatus so authorized and in accordance with the requirements of the provincial legislation." And in Ontario, we have sec. 4a of *The Evidence Act* as amended by S.O., 1960-61, Chap. 24, sec. 1, which reads in part: "... a stenographic reporter, shorthand writer, stenographer or other person ... may record the evidence and the proceedings by any ... device for recording sound of a type approved by the Attorney General." Only the Stenomask has been approved by the Attorney General in Ontario.

In this connection, it is well to add that there is no objection to having a microphone in the witness box. Every magistrate is familiar with the witness (whose voice, no doubt, can be heard a few blocks away if he's in his favourite beverage-room) who cannot be persuaded in a court to raise his voice to a level at which all parties concerned in the case can hear him. On one occasion, when it was manifestly impossible for anyone to hear the witness, after repeated efforts to get him to speak up, I called a police officer forward, had him sworn as an interpreter, that he was familiar with the English language and that he would faithfully, etc., translate the questions put, the answers given, etc., from English to English. On another occasion, none of us could understand a woman witness who spoke with a marked foreign accent, so marked, indeed, that only a third of what she said was intelligible. I asked her what language she spoke with the idea of getting an interpreter and was a little embarrassed when she said that English was the only language she spoke. We could all understand that, unfortunately. We did the best we could by making her repeat her answers over and over again until they were understood.

SHOULD A WITNESS REMAIN STANDING WHILE GIVING EVIDENCE?

There is no objection to permitting witnesses to be seated while giving their testimony, and indeed, it is already permitted in Ontario by some judges and magistrates. Witnesses are nearly always nervous, and on many occasions, when they were required to stand, I have seen their knees shaking; such witnesses were not merely nervous; they were almost paralyzed with fear. Let them be seated by all means.

SHOULD A MAGISTRATE ADDRESS SERVICE CLUBS, ETC.?

There can be no objection to a magistrate addressing any body he may wish to, provided, however, he does not deal with any controversial subject and does not criticize the law, no matter how bad he thinks it is in some department or other. Nor should a magistrate publicly criticize a government or any section of it and it should be obvious to say that he should never criticize a judge. In Western Canada, a judge was removed from office on the recommendation of a Royal Commission because he hired a hall and delivered hand-bills advertising that he would speak. It appeared that a judgment of his had been upset by the Court of Appeal, and the interesting subject of the address he gave at the public meeting was that the members of the Court of Appeal who reversed him were a pack of crooks and should be locked up. We may say what we like to our friends in private about what we think of Ontario's liquor laws, but to criticize them in public or at semi-public affairs is rather like biting the hand that feeds us. On the other hand, if we think any law is unfair or inequitable, the place to discuss it is at a meeting of the Ontario Magistrates Association, which has a Legislation Committee, where amendments of the *Criminal Code* and other statutes with which we are concerned are constantly suggested and discussed.

WHAT IS THE ONTARIO MAGISTRATES ASSOCIATION?

It is, as the name indicates, an Association of Ontario magistrates. It meets annually at a conference, where matters affecting magistrates are discussed freely. Its Executive Committee meets several times a year and its other Committees

meet upon the call of their Chairman. Standing Committees of the O.M.A. are the Legislation, Sentencing, Education, Uniformity of Court Procedure and Probation Committees and special committees are appointed from time to time. In addition, regional conferences are held now and again. Membership in the Association should be of great value to any magistrate. The O.M.A. is doing a splendid job and should be supported. Annual fees are paid on behalf of magistrates either by the government or the city to which a magistrate is assigned. See Appendix E for the Association's Constitution.

WHAT DOES *STARE DECISIS* MEAN?

It is a Latin phrase meaning "to stand by things decided," but it is more than that: it is a legal doctrine whereby magistrates are bound by the law pronounced by higher courts. Thus, in Ontario, magistrates are bound by the decisions of the Court of Appeal, the Supreme Court of Canada and the Judicial Committee of the Privy Council in its decisions in Ontario cases, although, of course, Canadian appeals to the latter body have been abolished. Ontario magistrates are not bound by other Provincial Courts of Appeal or High Court judges in other Provinces but their decisions will often be useful guides. The law is unsettled as to whether a magistrate is bound by a County or District Court judge in his own Province, but if it is ever settled, I am inclined to think that it would be held that a magistrate is bound by the published decisions of a County or District Court judge in the County in which the magistrate is pursuing his functions. Magistrates are not bound by decisions of the House of Lords or the English Court of Criminal Appeal, and a good example of this is the celebrated decision of Lord Goddard in which he said that he would not convict an accused person on the evidence of an *agent provocateur*, colloquially called a stool-pigeon. The law in Ontario is perfectly clear that an accused person may be so convicted, and the law in Ontario must be followed. The doctrine of *stare decisis* is not applied to the decisions of United States courts, nor to the courts of any Commonwealth or foreign country. A magistrate is not bound by the decision of any other magistrate, even in the same county.

SHOULD I VISIT THE PENITENTIARIES AND JAILS OF ONTARIO?

It is generally agreed that you should, if only to see precisely the kind of life an accused person is obliged to live when you sentence him to a penitentiary or a jail. There are maximum and minimum security institutions in Ontario, both penitentiaries and jails. See Appendices.

MAY A MAGISTRATE VISIT THE SCENE OF AN OCCURRENCE IF BOTH COUNSEL AND THE ACCUSED ARE PRESENT?

Oddly enough, a judge can, with or without a jury, but a magistrate cannot. This is well-settled law.

IS IT CORRECT TO REFER TO US AS POLICE MAGISTRATES AND OUR COURTS AS POLICE COURTS?

No. These terms were abolished in Ontario in 1923.

IS THERE ANY OBJECTION TO A PHOTOGRAPHER TAKING PICTURES IN A COURT-ROOM WHILE A TRIAL IS PROCEEDING?

Yes. Such a thing detracts tremendously from the dignity of the proceedings and would be invariably resented by an accused person. It is not permitted in the courts of whatever high or low degree in the United Kingdom or in Canada.

WHAT IS A *VOIR DIRE*?

Voir Dire is a French phrase meaning "to see to say" and is pronounced "vwar dear". It is a trial of a collateral issue within a trial. There are a number of circumstances when the holding of a *voir dire* is proper, but the usual one is when the accused has made a statement to the police, and counsel for the accused refuses to admit either that he made the statement or that it was made voluntarily. If the accused has no counsel, he should not be asked if he admits that he made the statement and that it was made voluntarily; instead, the *voir dire* should proceed. First, the Crown calls its witnesses to the taking of the statement and negatives threats or promises made to the accused and each in turn is cross-examined by the accused or his counsel, but at this stage of the proceedings, cross-examination is limited to the two points: Was the statement made? Was it voluntary? (If the accused is undefended, the

word "voluntary" should be defined for him.) The accused is entitled to have all police officers who were in his presence from the time he was arrested until he made the statement produced for cross-examination. When all the Crown's evidence is in, the accused and his witnesses are called, in whatever order the accused or his counsel may choose, and the Crown then has the right of cross-examination, similarly limited in scope, as was the accused's. The Crown has the right of Reply. Then the magistrate rules on the matter by saying: "I rule the statement admissible," or for example, "I am not satisfied that no threats were made to the accused; I consider that the words, 'It is better for you to tell the truth' used to the accused by Police Constable Black, constitute a threat. I rule the statement inadmissible."

The trial then proceeds.

I REALIZE THAT IN THE LARGER CITIES, A MAGISTRATE CAN READILY CONFER WITH A COLLEAGUE, BUT WHAT DO I DO WHEN I HAVE A PROBLEM, PARTICULARLY ONE OF SENTENCING?

Your favourite colleague is as close to you as the nearest telephone. Do not hesitate to call one or more magistrates to assist you in solving any problem you may have. No matter how senior magistrates may be in the magistracy, they all have problems themselves and it is of great assistance to discuss them with other magistrates. Any magistrate will welcome such a call—it's flattering, isn't it?—and he will do all he can to assist his colleague in solving his problem.

WHEN CAN I CHANGE A PLEA OF GUILTY AND HOW LATE IN THE PROCEEDINGS CAN I DO SO?

This is a situation that occurs time and time again. For example, an accused thinks his offence is trifling and pleads guilty "to get it over with" or to get back to work and hopes a small fine will be imposed. Or he is told by a police officer that the magistrate before whom he is going to appear always suspends sentence on a first offence on the charge he is facing. Or he is ignorant of many matters, and thinks that he will be convicted no matter what happens, even though he is innocent,

and thinks mistakenly that he will annoy the magistrate if he wastes time by pleading not guilty and wasting everybody's time. There are countless reasons why an accused person pleads guilty when he is not guilty.

It will often happen that an accused person pleads guilty and is remanded for the magistrate to obtain a pre-sentence report on him. When the magistrate gets the report, he comes upon the astonishing information that either the accused is not guilty at all or at worst, there is a reasonable doubt of his guilt. Sometimes, indeed, it is manifest that the accused was not guilty.

If it is clear that the accused is not guilty, a copy of the pre-sentence report should be delivered to the Crown with a suggestion that the charge be withdrawn. Then when the accused appears for what he thinks is sentencing, the magistrate orders the plea of guilty changed to one of not guilty, and it is the Crown's next move. Note that the magistrate cannot then dismiss the case or withdraw the charge. The request for withdrawal must come from the Crown, and the case cannot be dismissed until all the evidence is in on both sides, and with a plea of not guilty entered, the case has to be tried all over again.

If the Crown asks that the charge be withdrawn, the magistrate makes the order and the accused is released, and it may be that the magistrate should apologize for his having been kept in custody, even though it was no fault of his.

But sometimes, the Crown will not consent to a withdrawal. In such event, the case proceeds, and after hearing all the evidence, the magistrate convicts or acquits, as in any case.

It is remarkable how often an accused person will plead guilty to a charge when he is absolutely innocent. During one month I spent in the same court, it happened three times, and on each occasion, the accused was represented by counsel, but not the same counsel. This is another example of the tremendous value of pre-sentence reports.

**ON A PLEA OF GUILTY, SHOULD THE WITNESS BE SWORN?
IS THERE ANY OBJECTION TO THE CROWN MAKING A
STATEMENT OF THE FACTS?**

The practice varies from one jurisdiction to another, but there is no legal requirement that a witness be sworn in such a case, nor is there any objection to the Crown stating briefly the facts of the case of which he is aware. In either event, however, the accused should be asked: "Are the facts as stated by the witness (the Crown Attorney) correct?" If he says "No," he should be allowed to say in what way they are wrong. If this makes a difference to the way in which the magistrate will deal with the matter, then sworn testimony should be given (another case of a *voir dire*) to clear the matter up and ascertain the truth so far as may be done.

If, however, the fact that the accused disputes is inconsequential, as it so often is, the magistrate says: "I accept your statement of the disputed fact as correct."

If the accused says the facts are correct, or the magistrate has accepted his version, he should then be asked: "Is there anything (further) you wish to say?" or "Have you anything to say before the court imposes sentence upon you?" And he is, of course, heard.

**WHEN THE CROWN REQUESTS THAT A CHARGE BE
WITHDRAWN, SHOULD THE MAGISTRATE NOT ASK WHY?**

The best practice is for the Crown to do so without being asked. The magistrate and the Crown should agree upon this, as it often creates a very bad impression when the press and the public are not informed of the reason for the requested withdrawal. However, a magistrate has no right to ask for the reason for the requested withdrawal and, in fact, has no alternative but to order the withdrawal when the Crown asks for it. It is also just as well to make it clear that the withdrawal in no way affects the Crown's right to initiate the proceedings later on if sufficient evidence warranting prosecution anew is made available to them. There is no double jeopardy in a *re-laid* charge for the same offence in such a case.

IN MY COMMUNITY, LAW-STUDENTS ARE APPEARING AS FREE LEGAL AID COUNSEL, AS THE FREE LEGAL AID SERVICE CANNOT RECRUIT ENOUGH LAWYERS. IS THIS PERMISSIBLE?

It is perfectly clear from *The Barristers Act*, R.S.O., Chap. 30, sec. 5 and Code Sec. 707 (2) that a law-student cannot appear on indictable offences, but may appear as agent, not counsel or law-student, on summary conviction matters. Free legal aid organizations, if they impress law-students into acting for those charged with indictable offences, are defying or ignoring the law. A magistrate should do neither.

Law-students will sometimes say: "I have often appeared before Magistrate Black on indictable offence cases, Your Worship." How to answer this is a little difficult without showing disrespect for Magistrate Black, but should probably be handled by saying: "I'm very sorry, Mr. Doe; perhaps Magistrate Black is right and I am wrong, but this has been my invariable practice and I will not depart from it now."

IS IT PERMISSIBLE FOR ME TO ALLOW A CONVICTED PERSON WHO HAS BEEN IN CUSTODY OR ON BAIL FREE ON BAIL UNTIL SENTENCE?

It is permissible but should be done only when special circumstances warrant it. Upon conviction, the bail is automatically cancelled, and strictly speaking, if it is the intention of the magistrate to permit an accused person to go on bail after conviction a new bail bond should be prepared and signed. But the usual practice is that when the accused in such a case is remanded for sentence, he spends the intervening time in custody.

I OFTEN READ IN THE PAPERS THAT ANOTHER MAGISTRATE HAS SENTENCED AN OFFENDER TO TWO YEARS' SUSPENDED SENTENCE. CAN THIS BE DONE?

No. The probabilities are that a reporter has translated a sentence of Suspended Sentence and two years' probation to a Suspended Sentence of two years. Or it may be that the magistrate has told the offender that if he comes back on a charge of breach of probation, the sentence will be two years, and the reporter has similarly translated the sentence for the benefit, if that's the word, of his readers.

CAN A SENTENCE BE DATED BACK?

It can't be done under *The Criminal Code*, say countless judgments of Canadian Courts of Appeal.

However, magistrates get around this obviously unjust state of affairs in two ways: if, for example, the accused has been in custody for three weeks, the magistrate will say in sentencing him: "In imposing sentence, I am taking into account the fact that the accused has been in custody for three weeks. Ordinarily, I would have sentenced him to six months' imprisonment. Instead, the accused will go to jail for five months."

The second way is illegal. Here you have a case of drunk driving, and the accused has already spent seven days in jail awaiting trial, and we'll assume that in your part of the Province, it is customary to sentence such an accused to the statutory minimum. The magistrate says to the Crown Attorney: "The accused, I observe, has already spent a week in custody. I propose to sentence him to seven days imprisonment, effective (date—a week before). Does the Prosecution undertake not to appeal from my sentence?" The reply will almost always be in the affirmative, but that does not make it right or legal.

A bolder magistrate will say: "The accused will go to jail for seven days, effective (date—a week before). You are free to go." So far, no appeal has been taken from such a sentence, successful or otherwise, but it is still wrong.

However, a sentence may be dated back if it is imposed for breach of any Provincial statute (*Summary Convictions Act*, R.S.O., 1960, Chap. 387, sec. 20).

Now and again, a magistrate will get a letter from a prisoner whom he has earlier sentenced from the jail in which he is incarcerated, telling him he was in custody for X weeks or days, and asking the magistrate if he will date the sentence back. By that time, it is too late for the magistrate to do anything about it, whether he wants to or not, but the letter should not be ignored, nor should it be answered by the magistrate. A Court Clerk should answer the letter something like this:

"Dear Mr. Black:

"Magistrate Smith has asked me to answer your letter of October 10 and to tell you that because of many decisions of the Court of Appeal, he has no power to date a sentence back.

(And if true—not otherwise)

"His Worship has asked me to tell you that when you were sentenced, he took into account the time you had been in custody, and imposed sentence accordingly.

"Yours very truly,

"(Signature of Court official)

"Court Clerk

"(or whatever title he has)"

Then the prisoner writes another letter, saying that a fellow-inmate had his sentence dated back by another magistrate. It is easy to see why some magistrates always date a sentence back when the accused has spent time awaiting trial in custody.

WHAT ABOUT REMANDS OR ADJOURNMENTS?

A remand is granted to a person in custody or one out on bail; an adjournment to one who comes before the court on a summons.

A remand for one in custody can be for no longer time than eight days; for an accused on bail or one summoned to court, there is no limit if both parties consent.

In the past, some magistrates circumvented the law by remanding an accused for sentence without naming any date. They were not necessarily ignorant of the law; they probably decided that a conviction for a first offender would be so harmful to the accused that it was not justified by the triviality of the offence committed.

Other magistrates have used the artifice, for the same purpose, of remanding an accused or adjourning his case *sine die* (without a day), a common practice in civil law, but not authorized in criminal law.

Such magistrates were in all likelihood trying to follow the enlightened English practice of discharging, either absolutely or conditionally, a first offender. But it is not legal in Canada yet, although the Fauteux Report has recommended that the English practice be incorporated into our law. That time will undoubtedly come, but it is not here yet.

A magistrate should not circumvent the law, no matter for what good motives. He does not make the law; his job is to administer the law, imperfect as it may be, in his own private opinion.

But if a magistrate is impatient with the slow progress the government is making with the recommendations of the Fauteux Report, there is nothing in *The Criminal Code* or elsewhere that would prevent him from remanding someone he had convicted for sentence to January 2, 2060, or adjourning a case (instead of *sine die*) to the same date. If the magistrate and the accused are both around when the time comes, Justice assuredly will be done.

However, such activity on the part of a magistrate would assuredly be frowned on, no matter how legal it may be at the moment.

WHAT DOES *RES GESTAE* MEAN?

Literally, the things done. In legal proceedings, the facts surrounding or accompanying a transaction; all facts so connected with a fact in issue as to introduce it, explain its nature, or form in connection with it as one continuous transaction. The phrase is chiefly used in the law of evidence, the rule being that evidence of words used by a person may be admissible (notwithstanding the general rule against derivative (e.g., hearsay) evidence), on the ground that they form part of the *res gestae*, provided that evidence of the act which they accompanied is itself admissible, and that they reflect light upon or qualify that act. Therefore, where a woman went to be examined by a surgeon with a view to effecting a policy of insurance on her life, and a few days afterwards stated to a friend that she was ill when she went, and that she was afraid she would not

live until the policy was made out, and then her husband could not get the money, evidence of these statements was held admissible in an action on the policy, on the ground that as the woman's previous statements to the surgeon were admissible in evidence, her statements to her friend were also admissible, being part of the *res gestae*, that is, as following and explaining her previous statements. Similarly, on an indictment for treason in leading a riotous mob, evidence of the cry of the mob is admissible, because it forms part of the *res gestae*. So, too, on an indictment for rape, are the cries of a woman who is being ravished (*Regina v. Lillyman*, (1896) 2 Q.B. 167) (*The Dictionary of English Law*, edited by Lord Jowitt, p. 1533).

CHAPTER X

THE GRANTING OF BAIL

The Index of the *Criminal Code* will disclose the Code sections that deal with bail in a good many aspects, but many magistrates are perplexed because of decisions on the granting of bail that seem to be contradictory, and as most of these decisions were made outside Ontario, and hence not binding on Ontario magistrates, the perplexity is compounded.

It is unfortunate that there is no decision of the Ontario Court of Appeal that deals exhaustively with the principles with which a magistrate should concern himself in the granting of bail. Until there is, about the best that can be done is to mention the decisions that have been made on the matter.

The principles to be considered in granting bail appear to be clear in England of the mid-19th century, and appear to have been more or less consistent since that time. In *In Re Robinson* (1854), 23 L.J.Q.B., 286, Mr. Justice Coleridge said the sole test as to whether or not an accused should be admitted to bail was the consideration as to whether he was likely to appear at his trial, and that in determining that question, three considerations were to govern: the nature of the crime; the probability of conviction; and the severity of the penalty. This was approved in *Ex parte Barronet*, (1852) 1 E. & B., 4, 5.

But the Canadian judges for a long time seemed to take a more narrow view than their English counterparts.

In *Ex parte Fortier*, 6 C.C.C., 191, a Quebec case, Mr. Justice Wurtele said: "In determining whether or not to admit an accused person to bail the principal thing to be considered is therefore the probability of his appearing for trial, and to determine this question it is proper to consider the nature of the offence charged and its punishment, the strength of the evidence against the accused, his character, his means and his standing. Where a serious doubt exists as to the guilt of the

accused, and he is entitled to the benefit of every reasonable doubt, his application for bail should be granted. Then, again, if on the evidence it stands indifferent whether the accused is guilty or innocent the rule generally is to admit him to bail; but if, on the contrary, his guilt is beyond dispute, the general rule is not to grant the application for bail, unless the opportunities to escape do not appear to be possible and the probability of his appearing for trial is consequently considerable, if not sure."

In *Re Rex v. Lepicki*, 44 C.C.C., 263, a Manitoba case, Mr. Justice Mathers said: "On an application for bail the primary consideration is the probability of the accused appearing or not appearing for trial. In arriving at a conclusion upon that question, and in fixing the amount of the penalty (*sic*), many other matters may be weighed, but the determining question is, will he be present when required?"

In *Regina v. Bronson*, 25 C.R., 157, a British Columbia case, Sargent, C.C.J., said: "The fundamental principle of bail, as I understand it, is that the bondsman after entering into the recognizance becomes the keeper of the accused and responsible for the production of the prisoner in the same manner as the gaoler from whose custody the accused has been released."

In *Regina v. Scosky*, 17 W.W.R., 94 and 22 C.R., 366, Judge Sargent also said: "The law is clear that the surety's prime obligation is to ensure the appearance of the accused at the proper time and place, and it must not be understood that this decision in any way lessens this obligation or lays down any general rule that efforts to find and bring back the accused after he has defaulted will justify relief against forfeiture of the recognizance."

In *McIntyre v. Recorder's Court*, (1947) R.L., 357, a Quebec case, it was held that "in non-capital cases it has been said that the sole purpose of bail is to ensure the accused's appearance for trial and that in fixing the amount a judge should reject all other considerations from his mind, since the accused is presumed innocent until a court has found him guilty."

But in 1945, the pendulum had started to swing the other way and in *In Re N.*, (1945) 19 M.P.R., 149, Chief Justice Campbell of Prince Edward Island had different views. The head-note of that case reads: "In addition to the test as to whether or not the accused is likely to appear at his trial, on an application for bail, the Court will consider whether or not the public interest might be endangered by permitting the accused to be at large." In this case, Chief Justice Campbell took into account "the dastardly nature of the offence" (we are not told what the offence was), the fact that the probability of conviction appeared positive, and the available (*sic*) penalty was 14 years. In addition, the accused was afflicted with "an advanced stage of V.D. for which he refused treatment." Bail was refused. It is interesting to note that Chief Justice Campbell cited the Robinson case with approval.

Then in 1947 came the celebrated Phillips case (*Re Phillips*, 32 C.A.R. 47), a judgment of the English Court of Criminal Appeal, which is often cited by Ontario Crown Attorneys. Phillips was 23 years of age and had a criminal record. The Court said in part:

"The Court feels very strongly that the applicant ought not to have been released on bail. In cases of felony, bail is discretionary, and the matters which ought to be taken into consideration include the nature of the accusation, the nature of the evidence in support of the accusation, and the severity of the punishment which conviction will entail. Some crimes are not at all likely to be repeated pending trial and in those cases there may be no objection to bail; but some are, and *housebreaking particularly is a crime which will very probably be repeated if a prisoner is released on bail, especially in the case of a man who has a record for house-breaking such as the applicant had.* (Italics mine). It is an offence which can be committed with a considerable measure of safety to the person committing it. There were three charges against the applicant. With regard to one there was no defence and in the case of another he was actually arrested in the act. Yet in spite of all his previous convictions the applicant was given bail, not once but twice,

first pending the hearing before the magistrates and again on committal for trial. To turn such a man loose on society until he had received his punishment for an undoubted offence, an offence which was not in dispute, was, in the view of the court a very inadvisable step. They wish magistrates who release on bail young housebreakers, such as this applicant, to know that in 19 cases out of 20 it is a mistake. The Court hopes that some publicity will be given to these observations so that magistrates may know the views of the Court of Criminal Appeal."

In 1948, the Phillips case was approved by Judge Sargent in British Columbia in *Rex v. Vickers and Fletcher*, 93 C.C.C., 342 and the head-note reads: "Where accused, who were charged with shopbreaking, applied for bail after committal for trial, *held*, in view of their long criminal records, previous drug convictions, recent associations with criminals, the nature of the offence and their subsequent conduct, bail should be refused."

Then in 1953 came the case of *Regina v. Samuelson and Peyton*, 109 C.C.C., 253; 17 C.R., 395, a Newfoundland case decided by Mr. Justice Winter. The contradictory authorities are considered by Mr. Justice Winter in a most scholarly fashion and the entire judgment—not just the head-note, which may mislead—should be read with care.

And in 1958, the pendulum swung back the other way with the case of *Re Johnson's Bail*, 29 C.R., 138, a Saskatchewan case decided by Mr. Justice McKercher, where a magistrate had refused an application for bail of an accused person who, out on bail on a charge of rape, was re-arrested on another charge of rape. On application to Mr. Justice McKercher, bail was allowed and set at \$5,000. It is significant that neither counsel nor the judge mentioned the Phillips case.

The judges of the English Court of Criminal Appeal, a useful guide, one would think, have said on many occasions that persons with bad criminal records should not be granted bail. *Regina v. Wharton*, (1955) C.L.R., 540; (1955) C.L.Y., 540. It is interesting to note that the judgment in this case

was circulated to clerks to magistrates in England (Home Office Circular No. 132/1955).

Bail should not be taken from the following persons:

1. An accomplice in the offence with which the accused is charged;
2. A person with a previous conviction for a serious offence;
3. Counsel or the solicitor of the accused;
4. A person who has been indemnified in respect of the bail or who has received or been promised any consideration for going bail;
5. A person in custody or on bail awaiting trial for a criminal offence;
6. Anyone under 21 years of age;
7. A person who has already gone bail for some one other than the accused;
8. A married woman unless she has a separate estate;
9. A non-resident of Ontario.

—Annotation, *Bail in Criminal Cases*, by Eric Armour, K.C., 47 C.C.C., 1, at p. 6.

CHAPTER XI

TAKING THE EVIDENCE

The operative section of the *Criminal Code* as to the method of taking evidence is sec. 453, and it will be noted that this section was amended by S.C., 1960, Chap. 37, sec. 2, so as to permit the use of reporting by mechanical devices, if authorized by provincial legislation. In Ontario, *The Evidence Act* was amended by S.O., 1960-61, Chap. 24, sec. 1, to authorize such reporting if the mechanical device is of a type approved by the Attorney General. The only mechanical device that has been so approved is the Stenomask, a device whereby the operator, sitting near the witness-box, with a mask over his nose and mouth, repeats the evidence to a machine like a dictaphone. The Stenomask has been used widely in the magistrates courts of Metropolitan Toronto with great success; it records the evidence accurately and it is perfectly silent.

As for the trial of indictable offences, Code sec. 471 states in part: “. . . the evidence of witnesses for the prosecutor and the accused shall be taken in accordance with the provisions of Part XV relating to preliminary inquiries.”

And for summary conviction offences, Code sec. 708 provides in part that on a plea of not guilty only, “. . . the court shall take the evidence of witnesses for the prosecutor and the defendant in accordance with the provisions of Part XV relating to preliminary inquiries.”

Where there is no court stenographer or Stenomask, the provisions of Code sec. 453 appear to be very onerous and time-consuming, but they should not be departed from a trifle and failure to comply strictly with them would undoubtedly result in a successful appeal from a conviction with, at best, a new trial being ordered.

CHAPTER XII

THE PRELIMINARY INQUIRY

Part XV of the Criminal Code deals with the procedure on a preliminary inquiry and its secs. 449-465 should be studied with some care and it should be emphasized that these sections apply to a preliminary inquiry only and not to summary trials, whether of summary conviction or indictable offences, with the exception of sec. 453, which applies to all trials by magistrates, as well as preliminary inquiries. See Code secs. 471, 484 and 708 (3).

If the offence is one where the Crown has the option of proceeding summarily or as by indictment, the magistrate or the Clerk should ask the Crown how they elect to proceed. If they elect to proceed as by indictment, or if the offence is indictable, and the magistrate has power to try the case with the accused's consent, the warning set out in Code sec. 468 is given to the accused, and if he elects to be tried by a judge without a jury or a court composed of a judge and jury, the preliminary inquiry proceeds.

But if, however, the offence is one which a magistrate has no power to try, the warning set out in Code sec. 450 (2) (b) is given to the accused and his answer recorded before the preliminary inquiry proceeds.

A magistrate has power, after all the evidence of the Crown is in, to discharge the accused, no matter what the offence, if he considers that the Crown has not made out a case to be met, commonly called a *prima facie* case. In *Ex parte Reid*, 110 C.C.C., 260, Mr. Justice Spence said: "It has been said that the evidence to justify the holding of the accused for trial must be such as to cause the magistrate to believe that the accused probably was guilty. A practical test was suggested in *Re Latimer*, 10 C.C.C., 244, as being whether on the evidence a judge who was presiding at a jury trial would be justified in withdrawing the case from the jury."

A magistrate may commit an accused person on any charge or charges disclosed by the evidence, no matter what the formal charge is. *Rex v. Mooney*, 11 C.C.C., 333.

If the magistrate decides on the evidence he has heard to commit the accused for trial, he or his Clerk should address the accused as set out in Code sec. 454, and shall hear him if he wishes to say something. When he is heard, the magistrate asks the accused if he wishes to call witnesses, and if he does, they shall be heard. (Code sec. 454 (3) and (4)). Note that the accused has no option, as he has in all other proceedings, to call his witnesses first before he gives his evidence.

After the committal for trial, if the accused is on bail, new bail may be ordered by the magistrate, or bail refused. Similarly, if the accused is in custody, bail may be set by the magistrate.

CHAPTER XIII

TRAFFIC COURTS AND TRAFFIC SCHOOLS OR CLINICS

I—TRAFFIC COURTS

It is perhaps no exaggeration to say that traffic courts are the most important ones in our judicial system simply because more people see them in action than any other of all our courts. It is all the more important, then, that traffic courts be conducted with all the dignity any court in the land possesses; that no traffic case, no matter how trifling, be rushed; and that justice be done and be seen to be done.

A special hour should be set for hearing traffic offences, and they should not be dealt with on an ordinary calendar composed of all manner of criminal, quasi-criminal and by-law offences. It is realized that driving or in charge or control while intoxicated, driving or in charge or control while impaired by alcohol, criminal negligence in the operation of an automobile, reckless driving, careless driving and driving while disqualified are offences which are tried in the ordinary courts and are not properly traffic court offences. Traffic courts, then, handle all offences up to and including speeding, all of which are set out in Appendix X to this manual.

One magistrate told me how he handles his traffic court. "First of all," he said, "I make a distinction between two kinds of traffic offences: those where you lose demerit points on conviction, and those where you don't. The first kind I treat as I treat any other case, as it seems to me anyone is willing to lie to escape a loss of demerit points.

"But take the other cases: by the time an accused comes to court, he is either not guilty, or has convinced himself that he's not guilty. He has told his friends that he is going to fight the case and they have told him: 'You can never win. The judge will take a cop's word against yours every time.' Nevertheless, he is satisfied he is right and he is going to have his day in court,

even if it means half-a-day's pay which is perhaps more than the fine he might have paid out of court.

"So clothed in the armour of righteousness, he comes into court, and the police give damning evidence against him. When it comes his turn to give evidence—and he is usually his only witness; he had others, he explains, but he could not persuade them to take half-a-day off work—he tells one of two kinds of story: a ridiculous one or a reasonable one.

"Let us say the offence is parking at 4.05 p.m. on a street where parking is prohibited after 4.00 p.m. He gets into the box, and says: 'I did my best to get back by four o'clock, but I was accosted by another policeman a block away and questioned for about ten minutes about something I didn't know anything about, or I would have had my car out of there long before four o'clock.'

"His explanation is ridiculous, that is to say, it is no valid defence; yet it is entirely sensible to him. The parking by-law doesn't say anything about 'unless delayed by questioning by a police officer'; may be it should, but it doesn't.

"So I say to him: 'I accept your statement; suspended sentence; you are free to go.'

"And take the case of a man who says: 'I know my car is a blue Satellite, and the licence number is correct, too; but I was in Hamilton all that day driving my car, and didn't get home until the following day; at the precise moment charged, I was over 40 miles away.'

"If he's not lying, his story makes sense; we know of all kinds of mistakes in making out these parking tickets and summonses. So I say to him: 'I accept your statement; this case will be dismissed; you are free to go.'

"In other words, no one who defends himself when I am sitting in Traffic Court ever pays a fine for an offence for which he doesn't lose demerit points.

"This is possibly not the correct way of doing the job from an academic point-of-view of the administration of justice,

but I say it's the best way. Think of the number of satisfied customers I have in a year's time!

"Every one of those people go back to their friends and tell them who their words were accepted against those of a number of policemen; the "judge" believed them, not the cops.

"I say I am doing an excellent job of public relations, not only for Traffic Courts, but for all magistrates and indeed, all judges and all our courts."

"Maybe you are," I replied, "but what about your system getting known to your Traffic Court customers? Won't you get a lot more coming up with phoney excuses?"

"I don't think so," he replied. "First of all, you must remember these people have to take a half-day off to come to court to defend themselves and nearly always, they prefer to pay the fine out of court. There will be the odd liar get past me, of course, but that can't be helped. I might add that I've caught the odd liar out, too; naturally, I fine him."

II—TRAFFIC SCHOOLS OR CLINICS

Traffic schools or clinics, or whatever they may be called in various localities, are, of course, an excellent thing; and should be used invariably when it is evident that an accused person is ignorant of the traffic laws or the rules of the road. After an accused person has spent the required time at a clinic, and produces a certificate that he has done so, it seems a little unfair to fine him; suspended sentence should be adequate.

However, if an offender is sent to a traffic school or clinic for offences like careless driving, failing to stop, speeding (at a very high rate of speed) and kindred offences, suspended sentence might seem a little too lenient; perhaps in such cases, the offender might be told that the usual fine in cases such as his will be cut in half.

The pioneer traffic school in Canada was in Waterloo County, Ontario, and the magistrate responsible for organizing it and setting it into useful operation was Magistrate J. R. H. Kirkpatrick. I have asked Magistrate Kirkpatrick to tell us how his Court Traffic School works in Waterloo County.

COURT TRAFFIC SCHOOLS IN WATERLOO COUNTY

Contributed by

MAGISTRATE J. R. H. KIRKPATRICK

Court traffic schools were established in Kitchener in 1954 and in Galt in September, 1957. The school in Kitchener accommodates volunteers and persons referred from the Magistrates' Courts at Kitchener and Waterloo, and the school in Galt receives all persons referred from the courts in Preston, Hespeler and Galt, as well as volunteers.

The classes are held in the Police Stations and the course consists of two evening periods from 7.00 to 9.30 p.m. However, the drivers are given an opportunity to discuss driving problems and their accidents after 9.30 p.m., and many discussion periods have lasted until 11.00 p.m.

Each person is tested on psycho-physical equipment to discover or rule out physical impediments to safe driving. If a serious handicap is revealed, the driver may be referred to a medical specialist. Other drivers are apprised of their problems such as tunnel vision or lack of depth perception, and advised to compensate for such handicaps in their driving.

At the time he is notified of the date he is to attend traffic school, the driver is supplied with a motorist manual and Department of Transport pamphlets dealing with road signs, proper turns, etc. On the first evening the driver writes an examination comprised of 100 questions dealing with rules of the road, safe driving and accident prevention. A 75 per cent mark is a pass mark. The students' papers are returned to them the next evening and their errors pointed out and explained. Instruction is given on the rules of the road, safe driving habits and defensive driving, with the aid of 150 slides.

Many different procedures are used to refer the driver to the traffic school. It may be recalled that a government study on traffic schools emphasized the importance that attendance at traffic schools be voluntary, to ensure that the student derived the most benefit from the school. In a very few instances where someone has attended the school and merely gone through the

motions, resulting in a low mark in the examination, the writer has found that a second attendance at the school and the application of an "incentive" can improve this as much as 300 per cent. In referring people to traffic school, we have made no distinction as to who is or is not a suitable candidate, and our classes have included University professors, doctors, a lawyer, industrialists, teachers, nurses and married women. It is interesting to note that not one complaint has reached my ears as a result of any such referrals, and on rare occasions we have received commendation in open court by persons who have attended.

Chiefs of Police have established a practice of referring applicants for chauffeurs' permits, who are minors, to the schools, at the time of signing their applications for a licence.

CHAPTER XIV

THE JUVENILE AND FAMILY COURT

Contributed by

JUDGE V. LORNE STEWART

INTRODUCTION

The Juvenile and Family Court is distinguishable from other courts by its focus upon a selected number of judiciable family problems and conflicts. Recognizing the importance of the family unit, such matters as juvenile delinquency, child neglect, and certain aspects of domestic relations have become the responsibility of these courts. The perennial discussion as to whether the Juvenile and Family Court is more clinic and welfare agency than it is a court points up the significantly important double role that these courts are called upon to perform. Few will disagree that the Juvenile and Family Court is in fact a court but one which, because of its special jurisdiction, must maintain a special approach. Its purpose is mending the rifts in family life; establishing a just and reasonable financial plan of support when the home has fallen apart; and providing proper control and guidance for children who break the law or are in need of care or protection.

The principal phases of family law embraced in the jurisdiction of the Juvenile and Family Courts are: juvenile delinquency; contributing to the delinquency of children; child neglect (wardship and authority to supervise); children of unmarried parents; deserted wives' and children (including the reciprocal enforcement of maintenance orders); sections of the *Criminal Code* pertaining to behaviour within the family (assault, threatening, failure to provide the necessities of life and habitual drunkenness in the home).

Canadian Juvenile and Family Courts have not moved as far as some American courts in the direction of embracing a full jurisdiction over family problems. They can be considered Family Courts only in a limited sense. However, within their

jurisdiction they do exercise a significant socio-legal function. They are structured to protect and safeguard families by providing not only legal remedies but other types of help as may be required. This is not to deny the importance of community services but it is to underline the extended responsibility of the Judge of the Juvenile and Family Court. He cannot sit in judicial solitude nor can the court remain aloof from the unmet needs of the members of the family who ask for help. How far it should move out into the treatment area is a moot question but the court that is able to write its own prescription can usually command results more quickly and frequently achieve more satisfactory remedies. The *Juvenile Delinquents Act* envisages Judges with greater control over this prescription writing than in reality exists today. The Judge finds it necessary to accommodate his approach to the practices that have grown up in welfare and treatment services with all their limitations. The result sometimes is frustration, dangerous delay, and frequently the actual denial of a solution to serious problems.

1. JUVENILE DELINQUENCY

To understand the present operation and structure of Juvenile and Family Courts one needs to recall the early beginnings of this whole Juvenile Court movement. Needless to say, the approach has been fashioned with children in mind. Until less than 100 years ago there was no special provision for the trial of children in England. If the offence charged was indictable, the trial went before a jury at Assizes or Quarter Sessions while petty offences were tried summarily before Justices of the Peace in the usual way. In 1847, an Act allowed offenders under 14 to be tried summarily for stealing. The *Summary Jurisdiction Act* of 1879 made it possible for offenders under 16 to be tried summarily for nearly all indictable offences. As Professor R. M. Jackson states in his book *The Machinery of Justice in England*, these changes in Britain merely simplified proceedings against young offenders who were tried in the same courts and subject to the same conditions as adults. In 1889, the first Juvenile Court, specially designed to deal with children, was set up in Chicago. In Britain, *The Children's Act* of 1908, and in Ottawa, the *Juvenile Delinquents Act* of the same year

were enacted, and public opinion expressed in statutory form in a number of American States confirmed the fact that society had reached the point where it demanded special treatment for juveniles. Irrespective of the type of offences committed, they should be removed from contact with older or professional criminals and undesirable persons, and should be dealt with not as criminals but as children needing help, encouragement and guidance. In philosophy and humanitarian concern, these statutes were compatible with one another as indeed they were similar in much of the actual terminology used. Frequently it has been said that the Juvenile Court has grown up like Topsy. Because of the very unusual nature of the family-centred problems with which it is continually confronted and due to the fact that a special technique and *modus operandi* is needed in dealing with children, it has posed a problem as to how to fit it into the administration of justice.

THE JUVENILE DELINQUENTS ACT

The *Juvenile Delinquents Act* of 1908, as amended in 1929, is still our basic federal statute although undoubtedly it will be rewritten to bring it more in line with developments in social work practice and community requirements. It is safe to predict, however, that while a certain amount of clarification and change will have to be made concerning specific matters to assure a greater amount of uniformity across the country, particularly with respect to the lower and upper age-limits, yet it would be unwise to assume that the basic tenets upon which the Act has been structured should be altered.

Assuming that all readers have copies of the *Juvenile Delinquents Act*, a thorough knowledge of which is a prerequisite to any person dealing with a child in court, the following are deemed to be the more significant aspects of the statute:

- (1) *Offence and Approach.* The child may be brought before the court because he or she is alleged to have committed an offence, known as delinquency. It is provided that children shall not be charged in the same manner as adults. A special approach, a special offence, a special terminology have been established for children. They are charged with

being "juvenile delinquents"; the offence is "juvenile delinquency". Delinquency has never been classed as a condition although the Act provides that the child adjudged to have committed a delinquency shall be dealt with as one in a condition of delinquency. The intent was to moderate the method and approach to children brought before the court in order to accomplish the purpose for which these courts were conceived: to render "help and guidance and proper supervision".

- (2) *Nature of the Hearing.* While the statute provides that children may be tried informally, it is a fundamental consideration that the trial itself must be conducted in such a manner that it is not inconsistent with the proper administration of justice. This is not an impossible task provided that the Judge uses common sense, is aware of the nature of the persons before him and abides by the fundamental rules. Hearsay should be as foreign to a Juvenile Court as to any other court. A child has the same rights as an adult. In a properly conducted Juvenile Court the charge is read, the parents and child are instructed as to their right to counsel, and in the more serious cases the Crown is frequently present. It is necessary that there be preserved in the court-room a simple sense of justice and of seriousness; at the same time, neither Judge nor court officials can adopt an approach which mitigates against the *raison d'être* of such courts. In a sense we are on the horns of a dilemma in Juvenile Court—striving to do justly and, at the same time, keeping in mind the welfare of the child.
- (3) *Special Court—Exclusive Jurisdiction.* The Juvenile Court has exclusive jurisdiction over children under the age of 16 years in the Province of Ontario. The only provision for an exceptional proceeding in this regard is found in sec. 9 which provides that, in the case of a child over the age of 14 years where the act complained of is, under the *Criminal Code* or otherwise, an indictable offence, the Judge may, if he considers it to be for the good of the child and in

the interest of the community, transfer the case to the ordinary courts.

- (4) *What the Court Can Do.* Section 20 of the Act outlines the powers of the Court subsequent to an adjudication of delinquency. These are as follow:

20. (1) In the case of a child adjudged to be a juvenile delinquent the court may, in its discretion, take either one or more of the several courses of action hereinafter in this section set out, as it may in its judgment deem proper in the circumstances of the case:

- (a) suspend final disposition;
- (b) adjourn the hearing or disposition of the case from time to time for any definite or indefinite period;
- (c) impose a fine not exceeding \$25.00, which may be paid in periodical amounts or otherwise;
- (d) commit the child to the care or custody of a probation officer or of any other suitable person;
- (e) allow the child to remain in its home, subject to the visitation of a probation officer, such child to report to the court or to the probation officer as often as may be required;
- (f) cause the child to be placed in a suitable family home as a foster home, subject to the friendly supervision of a probation officer and the further order of the court;
- (g) impose upon the delinquent such further or other conditions as may be deemed advisable;
- (h) commit the child to the charge of any Children's Aid Society, duly organized under an Act of the Legislature of the Province and approved by the Lieutenant Governor-in-Council, or, in any municipality in which there is no Children's Aid Society, to the charge of the superintendent, if one there be;
or

- (i) commit the child to an industrial school duly approved by the Lieutenant Governor-in-Council.

(2) In every case it is within the power of the court to make an order upon the parent or parents of the child, or upon the municipality to which it belongs, to contribute to its support such sum as the court may determine, and where such order is made upon the municipality, the municipality may from time to time recover from the parent or parents any sum or sums paid by it pursuant to such order.

- (5) *Probation.* With the rapid growth of probation services in this Province, we are left with some tidying up to do in the matter of establishing a fuller use of this service, particularly as it applies to children. If we follow the formula used in placing persons on probation in the adult courts we will defeat some of the effectiveness of our special approach to children. For a Judge to place a child on a recognizance of good behaviour and then to endeavour to specify conditions ahead of time without leaving considerable latitude to the probation officer is to create a situation less effective and less satisfying than it should be. The probation officer on the job should have the power, in the light of the purpose of the court and acting as an extension of the Judge, to impose certain unforeseen requirements upon the juvenile as the occasion arises. Furthermore, the more skilled our probation officers become, the more they should be allowed to use their own initiative and discretion and apply their own special techniques in the rehabilitative processes of children. The length of probation should be more flexible than in dealing with adults. Probation progress should not only be reviewed regularly by the probation officer and his immediate supervisors but the case should be brought back before the Judge from time to time until the point has been reached where the probation officer is prepared to recommend to the court that it should discharge the offender from probation.

- (6) *Foster Homes.* Some practical problems arise if the court becomes the instrument through which children are placed in foster homes as provided in section 20 of the *Juvenile Delinquents Act*. Sec. 20 (2) provides that where a child has been so placed the Judge may order the municipality to which the child belongs to pay the cost of such foster-placement. This practice may create serious problems unless the municipality has made provision for this special expenditure of money. There are other aspects of this practice which also need thoughtful consideration. One has to do with the question as to how far a court should go in carrying out its own instructions. Should it become a foster home finding and supervising agency? Is it not better to leave this very specialized function, with all its ramifications, need for safeguards, special staff and standards, to the Welfare Department, to the Children's Aid Societies, or to some other social organization set up in such a way as to do a proper job in this important field?

Another complicating possibility is inherent in sec. 20 (1) (e) which provides for a child's return to its own home subject to the visitation of a probation officer. If subsection (2) is used, it becomes possible for the Judge to order the municipality to contribute to the support of the delinquent child in his own home. The effect of such a practice would be very distressing.

- (7) *Training Schools.* With respect to committals to Training School, it should be pointed out that the provision in *The Training Schools Act* is that the Judge commits the child as a ward to the Department of Reform Institutions on an indefinite basis; he does not have the authority to release this wardship even though this appears to have been the original plan envisaged in the *Juvenile Delinquents Act*.
- (8) *The Philosophy of the Act.* A discussion of the Act would be incomplete without a special reference to sec. 38 with its very broad point-of-view and positive insistence upon maintaining a special approach to children before the court. It would seem to indicate that we can anticipate continuing

to be on the horns of a dilemma and that the only way in which the Act can be made to operate and these specialized courts to fulfill their obligations rests mainly upon the Government's appointment of the proper type of Judges and staff and upon an imaginative extension of our approach to include persons representing areas which are seriously concerning themselves with the study and understanding of the special problems of children.

The idea of an integrated Juvenile and Family Court has much to be said in its favour. It is a concept not easy to achieve, especially as we endeavour to spell it out in terms of the practical aspects of organization. It is imperative that the staff of such an integrated Juvenile and Family Court work as a team with each discipline making its own unique contribution and respecting the others.

On the basis of the definition of "juvenile delinquent" (sec. 2 (h)) the actions of children which may bring them before court go far beyond the bounds of behaviour described in the *Criminal Code*. Violation of provincial statutes, municipal ordinances and by-laws, may result in children being classified as "delinquents". Thus, "unmanageableness" under *The Training Schools Act* may constitute and be counted as a delinquency. Habitual truancy under *The Schools Administration Amendment Act, 1962* now has become a delinquency, Local by-laws of one area may create delinquencies ignored in other communities.

The Judge can never be unmindful of sec. 20 (5):

The action taken shall, in every case, be that which the court is of opinion the child's own good and the best interests of the community require.

This basic intent should never be used as a substitute for poor practice and procedures.

2. NEGLECT OF CHILDREN

The year 1889 was one of much study of the causes of juvenile delinquency and of the laws and machinery then in existence for the protection of children. An editorial in the *Toronto*

Globe on "Juvenile Waifs and Strays" dealt with how most effectively to transfer "bad or neglected boys and girls into honest, honourable youths and maidens." It advocated an extension of placement and treatment facilities and strong measures to make fathers and mothers live up to their responsibilities.

One Children's Aid Society, at the time of its incorporation in 1891, set as its general objects:

To care for and protect neglected children; to secure the enactment and enforcement of laws relating to neglected children or juvenile offenders; to provide free summer excursions and other means of recreation or pleasure for poor children; and, generally, to advocate the claims of neglected children upon the sympathy and support of the public.

The Children's Protection Act was passed in 1893, ushering in the era of modern social welfare legislation. During the intervening years there has been a constant growth and development in the field of child care and protection. Out of early altruism has grown a profession of social work and other professional disciplines have become more and more involved in this area. This has been and continues to be reflected in legislation.

In 1954, *The Child Welfare Act* of Ontario was passed to consolidate and revise *The Children's Protection Act*, *The Children of Unmarried Parents Act*, and *The Adoption Act*.

THE CHILD WELFARE ACT

The Juvenile and Family Courts have jurisdiction under this Act with respect to Part II which deals with neglected children in need of care and protection and Part III in the matter of children born out of wedlock. The matter of adoption, dealt with in Part IV, remains with the County Courts.

An interpretation section of *The Child Welfare Act* defines the meanings of such words as "boarding homes", "child",

“foster home”, “Judge”, “neglected child”, “parent”, “place of safety”, “public place”, “*per diem* rate”, “receiving home”, and “ward”. Furthermore, it refers to the primary jurisdiction of The Juvenile and Family Court in Parts II and III.

“Child” means boy or girl actually or apparently under 16 years of age.

“Neglected child” includes twelve definitions. This is understandable inasmuch as neglect is a condition rather than an act. The most frequent types of neglect coming before the courts are:

- (ii) a deserted child;
- (iii) a child where the person in whose charge he is, cannot, by reason of disease or infirmity or misfortune or incompetence or imprisonment or any combination thereof, care properly for him; . . .
- (viii) a child who is delinquent or incorrigible by reason of the inadequacy of the control exercised by the person in whose charge he is or who is being allowed to grow up under circumstances tending to make him idle or dissolute.

“Rate” means the *per diem* cost for maintaining a child under the Children’s Aid Society and is set once a year by a Judge in accordance with a formula laid down in regulations.

“Ward” means a person committed to the care and custody of a Children’s Aid Society.

Other definitions include an orphan who is not being properly cared for; children associating with unfit persons; found begging; loitering; engaged in a street trade illegally; habitually absent from school; children denied proper medical, surgical or other remedial care; and an emotionally rejected child.

HOW CHILDREN ARE BROUGHT BEFORE THE JUDGE

Authorized persons may apprehend without warrant and take to a place of safety any apparently neglected child and detain the child there until the child can be brought before a Judge. (Sec. 12). But a child so detained shall be returned to the parent or guardian or be brought before a Judge within ten days of his detention.

Provision is made for other methods of getting a child before a Judge. (Secs. 12, 13).

HEARING

When a child has been brought before a Judge a hearing shall be held to determine whether or not the child is a neglected child. The Act makes it mandatory for the Judge to do the following:

- (a) Determine the child's name, age and religious faith. (Sec. 17);
- (b) Determine the municipality liable with respect to maintenance. In this regard:
 - (i) Reasonable notice must be given to any municipality and to parent or guardian or to the Province of Ontario that may be liable to pay the rate (Sec. 17 (4)) and the Judge shall not proceed to hear or dispose of the matter until satisfied in this regard.
 - (ii) When a hearing is adjourned the Judge must name the municipality to pay the rate. (Sec. 17 (8)).
 - (iii) Residence is to be determined according to the formula laid down. (Sec. 19). Occasionally it is necessary to make a ruling under Sec. 19 (3) when, failing sufficient evidence to the contrary, the municipality in which the child was resident on the day on which proceedings commenced is made liable for the rate.

- (iv) An order shall be made against a parent to refund to the municipality all or part of the rate if the Judge finds that the parent is able to pay. The exception is in the case of an order for permanent wardship in which case the Judge may use his discretion.

The Judge may hear any person on behalf of the child. Reasonable notice of the hearing must be given to the parents or guardians. The evidence of every witness shall be given under oath and shall be taken down and a transcript must be made available under certain conditions, within 20 days, upon request.

GENERAL PROVISIONS AND CONSIDERATIONS

Privacy

The hearing shall be held in premises specially maintained for the purpose or in the Judge's private office. Only persons immediately concerned in the case (parents, near relatives, Children's Aid officers, counsel, witnesses) are permitted to attend the hearing and the Judge may exclude any or all of the latter as he deems advisable.

Religion

A child is deemed to have the same religious faith as his father unless an agreement in writing, signed by both parents, that he be brought up in his mother's faith, is produced. The Judge may have regard to the child's wishes in this matter.

An illegitimate child is deemed to be of the same faith as his mother.

Religion and Placement

A Protestant child shall not be committed under this Part to the care of a Roman Catholic Children's Aid Society or institution and a Roman Catholic child shall not be committed under the Part to a Protestant Children's Aid Society or institution, and a Protestant child shall not be placed in the foster care of a Roman Catholic family and a Roman Catholic child

shall not be placed in the foster care of a Protestant family, and, where a child committed under this Part is other than Protestant or Roman Catholic, he shall be placed where practicable with a family of his own religious faith. Sec. 31 (3).

Interference with Ward

Action may be taken under sec. 33 against persons interfering with wards of the Children's Aid Society.

Actions Against Parents, etc.

Section 34 reads:

- (1) Any person having the care, custody, control or charge of a child who neglects, abandons, deserts or fails to support the child or inflicts unreasonable cruelty or ill-treatment upon the child not constituting an assault is guilty of an offence and on summary conviction before a Judge is liable to a penalty of not more than \$500 or to imprisonment for a term of not more than one year, or both.
- (2) Any person having the care, custody, control or charge of a boy or girl under the age of ten years who leaves the boy or girl unattended for an unreasonable length of time without making reasonable provisions for his or her supervision and safety is guilty of an offence and on summary conviction before a Judge is liable to a penalty of not more than \$100 and for a second or subsequent offence, \$200 or imprisonment for a term of not more than one year.
- (3) The Judge may in connection with any case arising under subsection 1 or 2 hold a hearing in respect of any child concerned and may proceed as though the child was brought before him as an apparently neglected child.

Miscellaneous Actions

Certain other actions can be taken with respect to children: performing in public, engaging in street trades, loitering in a public place (curfew), under sec. 35.

Protection of Children Born Out of Wedlock

Nothing in Part III requires a Children's Aid Society to interfere with the care and maintenance of a child born out of wedlock where the child has been adopted in accordance with the laws of Ontario or where the child is being cared for voluntarily by a person whom the Society considers suitable to have charge of the child.

Settlement by Agreement

When a child is born out of wedlock and no agreement between the mother and the putative father with respect to the care and maintenance of the child is in force, a Children's Aid Society and the mother may enter into an agreement with the putative father of the child. This may cover expenses and maintenance and may be varied at any time according to the putative father's change of financial circumstances. The method of payment shall be specified. The payment is made to the Children's Aid Society. In the case of default, the mother or the Society, separately or jointly, may make an application for an order to enforce the agreement. When the putative father is in default for 60 days and no such application has been made, the Society shall make an application within the following 30 days.

Such an agreement is admissible in evidence as *prime facie* proof that the putative father is in fact the father of the child when an application is made for an affiliation order.

COURT ACTION (APPLICATION FOR AN AFFILIATION ORDER)**Who May Make It?**

The mother of the child, a next friend or guardian, a Children's Aid Society, any person or municipality (with the approval of the Society) have an apparent legitimate claim for reimbursement of moneys paid in consequence of the pregnancy of the mother, the birth of the child, the death of the child, the maintenance of the child or the maintenance of the mother.

Limitations

A Society may institute or continue proceedings even though the mother has died.

No affiliation order shall be made unless the application is made in the lifetime of the putative father and:

- (i) is within two years of the birth of the child;
- (ii) is within one year after the doing of any act on the part of the putative father that affords evidence of acknowledgment of paternity;
- (iii) is within one year after the return to Ontario of the putative father when he was absent from Ontario at the expiration of the period of two years from the birth of the child;
- (iv) the putative father has failed in whole or in part to carry out the terms of the agreement entered into.

Privacy

All cases shall be heard in private and in a Juvenile and Family Court if one exists.

Orders

The Judge has the power to summon persons and documents.

The evidence of the mother of the child must be corroborated in some material respect.

If the Judge is satisfied that the putative father is in fact the father of the child and is about to quit the territorial jurisdiction of the court with intention of avoiding service or of evading his obligation in respect of the child, he may issue a warrant for the arrest of the putative father. Under certain circumstances a Judge may make an affiliation order *ex parte*.

When Putative Father Appears—Affiliation Order

If sufficient evidence is adduced, the judge may make an order declaring the putative father to be in fact the father and, keeping in mind the circumstances of the case, order him to pay expenses and maintenance. The mother may be ordered to share the costs and contribute according to her means.

Enforcement of Orders

An order may be enforced in the same manner as those made:

- (i) under *The Deserted Wives' and Children's Maintenance Act*;
- (ii) by an order made or fine imposed under *The Summary Convictions Act*;
- (iii) by a judgment of the Division Court; and
- (iv) to assure the enforcement of the order the Judge may order anyone to report to a probation officer if the child is likely to become a public charge. Failure to report in itself may constitute an offence, punishable by imprisonment for a term of not more than three months.

Appeal

With leave of a Judge of the Supreme Court, any person may appeal from the order to the Court of Appeal within 60 days from the making of the order.

REGULATIONS

Regulations made under *The Child Welfare Act* have been promulgated in considerable detail. These include forms to be used at various stages in the making of application to the court; those governing procedures and formulas for determining the *per diem* rate; and forms necessitated by the proper implementation of due process.

THE MINORS' PROTECTION ACT

Protection is extended to children under 18 years of age with respect to:

- (a) Their admission to pool halls.
- (b) Their possession of tobacco.

The Juvenile and Family Court has primary jurisdiction in these matters. The penalty is a fine of not less than \$2.00 and not more than \$50.00 against the adult keeper or supplier.

3. DOMESTIC PROBLEMS

The Juvenile and Family Courts have limited jurisdiction with respect to certain problems which arise between husbands and wives. *The Deserted Wives' and Children's Maintenance Act* and *The Reciprocal Enforcement of Maintenance Orders Act*, in which it is provided that wives and children separated from their husbands and fathers may make application for maintenance, constitute a substantial part of the work of these courts.

The court renders service to the community in this respect in two ways:

- (1) *Family Counselling and Conciliation.* Family counsellors (probation officers) endeavour to assist couples to readjust themselves to one another and so to keep the home intact. Where a breach has actually occurred they endeavour to bring the couple back together if it is deemed advisable. It is inevitable that the Juvenile and Family Court should engage in this kind of conciliation work. Too frequently when young couples appear before the court and make statements on oath concerning their marriage it becomes much more difficult to knit the family together again, so that this preventive function of the court is considered to be most important and is frequently effective. The field of family counselling, engaged in by persons trained to do the job, is on a pre-court level; in fact, if it is successful, the case need not appear before a Judge at all. The method is that of social casework and the application of mature common sense. While it may be argued that this is usurping the work of the churches and social agencies, the basic fact is that these people do come to the court for assistance. Frequently they come asking simply for the opportunity to put their case before the court in order to secure financial assistance. Sometimes the motive is to punish their husbands. The counsellor must decide between three alternatives:

- (a) he can refer the matter to an appropriate community agency;
- (b) he can counsel the couple himself;

(c) he can process the case into court.

This whole field of conciliation in matrimonial matters is receiving serious consideration in the English courts and more and more the emphasis is upon the court officer assuming the role of family counsellor endeavouring to weld the family together again.

- (2) *Court Actions (Domestic Cases)*. Where the parties insist on having their cases heard, or where the matter has developed to the point where this is the natural next step, the family counsellor makes the necessary arrangements to place the case before a Judge. Keeping in mind the purpose of the Juvenile and Family Court, the door should never be closed to the possibility of reconciliation even at the stage when the case is before the court and no Judge sitting in these courts is likely to overlook any glimmer of hope that the parties will become reconciled. However, it seems important to distinguish between the functions of the Juvenile and Family Court Judge and those of the family counsellor. The former is unwise to attempt to see the parties privately. Any such interview would leave him open to criticism and any subsequent decision to misunderstanding. If family counselling has failed, they are entitled to have their cases heard. They should not be denied this right.

THE DESERTED WIVES' AND CHILDREN'S MAINTENANCE ACT

The principle of family responsibility for maintenance of its members is deeply rooted in Canadian law and custom. Both federal and provincial legislation provide for legal action if this responsibility is evaded. While the *Criminal Code* sets out penalties when a husband or parent fails to provide, the provincial statute, *The Deserted Wives' and Children's Maintenance Act*, assumes a constructive role and provides the machinery whereby the practical means are set in motion for making orders, the actual collection of maintenance moneys and the enforcement of such orders.

- (1) *The Meaning of Desertion*. "Deserted wife": while in the great majority of cases the term "deserted wife" means

exactly what it says: she has been deserted by her husband, and at the same time he has failed to work out a suitable plan whereby she would be provided for financially; however, an extension of the definition of the words "deserted wife" has been added to the Act. It includes a wife who is living apart from her husband because of his failure to provide her with necessities, or because of his adultery not condoned by her, or because of his acts of cruelty, including cases where no actual acts of violence may have been committed but are such as to constitute the home an unfit place for the wife or the children; because of his conduct which causes "reasonable apprehension" of bodily injury or injury to health. The onus is placed upon the husband to provide not only money for the support of his children but also to provide an atmosphere in which they can be raised properly.

"Deserted child": the child is defined as "deserted" when deserted by a person specified in the law. In Ontario this means a child under 16 years of age whose father deserted him or wilfully refused or neglected to supply him with food or other necessities although able so to do. The principle here is that under all circumstances the father is obligated to provide for his children if he is in a position to do so.

- (2) *Procedure with Respect to Getting a Case Before the Court.* The wife may lay a complaint before the court or it may be laid on her behalf by some other person, such as a municipal official, a child's next friend, or the person having the care or custody of the child may also act on its behalf.

The problem of an appropriate schedule of fees and costs needs consideration. The basic point that cannot be ignored is that the purpose of the court is to obtain maintenance for the wife or the children or both. In many cases, to impose costs simply means depriving the family of that much money. As a result, many communities absorb the costs and the Judge is free to make the maximum order knowing that the money will be channelled quickly to the place where it is most needed.

- (3) *Enforcement.* If default is made in payment of the money ordered, the person in default may be summoned to appear before the Judge to show cause why he has failed to fulfill the requirements of the order. If he is unable to give a reasonable explanation for his default he may be imprisoned for a term of not more than three months unless the sum payable under the order or a lesser sum, if the Judge so orders, is sooner paid.

An order for payment of money may be filed with the Clerk of the Division Court and enforced by garnishee proceedings by execution or by judgment summons in the same manner as a Division Court judgment.

- (4) *Re-Hearing of Applications.* Where a Judge is satisfied that the circumstances of any of the parties have changed since the making of the order under the Act, or that evidence has become available that was not available upon the previous hearing, he may direct a re-hearing of the application. From the re-hearing of the application any order previously made may be confirmed, rescinded or varied.
- (5) *Enforcement in Other Jurisdictions.* Within the Province, where there has been a default in payment of an amount ordered by the court, a duplicate original of the order with as full a statement of the circumstances as is available may be sent to the Juvenile and Family Court Judge in any district where the person ordered to pay resides. The Judge in this area shall then summon the person reputed to be in default in order that he may explain or show cause why he has not obeyed the order of the court. If the Judge thinks that the order should be enforced at this point, he may take the necessary action to so do and shall follow this up with a report to the Judge who made the order.

THE RECIPROCAL ENFORCEMENT OF MAINTENANCE ORDERS ACT

The Province of Ontario now stands in reciprocity with respect to maintenance orders with all Canadian Provinces, the Yukon and Northwest Territories; the State of Michigan in the United States of America, and with the following states and

territories of Australia: Canberra; New South Wales; Northern territory of Australia; Queensland; South Australia; Tasmania; Victoria; and Western Australia. As for other countries, reciprocal arrangements have been made with England; Jersey, Guernsey, Alderney and Sark; the Isle of Man; Malta and its dependencies; New Zealand; Papua and New Guinea; Southern Rhodesia; and the Union of South Africa.

- (1) *Final Orders.* Maintenance orders made in Ontario may be sent to the above reciprocating states. These are channelled from the Ontario Courts through the Department of the Attorney General, through the appropriate government department in the reciprocating state and then down to the appropriate court. There the order is registered, enforced and the maintenance remitted to the originating court. In like manner, maintenance orders made by reciprocating states may be registered and enforced in Ontario.
- (2) *Provisional Orders.* Furthermore, provisional orders may be made in the Province of Ontario against persons residing in reciprocating states. These provisional orders, made in the jurisdiction where the deserted wife or children reside, are sent to the reciprocating state and there may be confirmed and enforced by the court located in the area where the husband resides. This feature works in reverse and provisional orders in reciprocating states against Ontario residents may be confirmed and enforced by the courts in this Province.

DETERMINATION OF CURRENCY

A maintenance order which makes payable sums of money expressed in a currency other than the currency of Canada necessitates the determination of the equivalent of the sum payable in the currency of Canada on the basis of the rate of exchange prevailing on the date on which the order was made. The Act provides that this shall be ascertained from any branch of any chartered bank and the court or the Registrar, as the case may be, shall certify on the order the sum so determined expressly in the currency of Canada.

OTHER STATUTES DEALING WITH MAINTENANCE**Children's Maintenance Act**

This Act is little used but provides that a parent has a legal duty to maintain and educate his child until the age of 16, taking into consideration the parent's station in life and means and ability to provide. Consideration is also given to the ability of the child to maintain himself. The penalty upon conviction is a gaol sentence of not more than three months.

Parents' Maintenance Act

If a Judge finds that a parent is dependent and that one or more of the children are able to provide in whole or in part for the support of that parent, he may make an order requiring them to pay such sums as he thinks proper. The money is payable at intervals not exceeding 31 days commencing from the date of the hearing, or any other date that may be set; the weekly rate does not exceed \$20. The children may also be ordered to make payments for the support of the parent for the period between the date when the information was laid and that of the hearing. A dependent parent under the Act is one who is destitute or by reason of age, disease, or infirmity, is unable to maintain himself, whether or not he is being cared for in a hospital, a home for the aged, or a charitable institution. Provision is made for a rehearing when circumstances change and the order may be enforced in the same way as orders under *The Deserted Wives' and Children's Maintenance Act*.

Juvenile and Family Courts Act, Section 20

Provision is made for a person entitled to alimony or maintenance under a judgment or order of the Supreme Court to file a copy of that judgment in the Juvenile and Family Court located in the area where the person ordered to pay resides. When so filed it will be enforced in the same manner as an order made in that court under *The Deserted Wives' and Children's Maintenance Act*.

This is purely an enforcement provision and does not allow for a re-hearing of the case or for a readjustment of the order in the Juvenile and Family Court. To secure a change in the order it is necessary for the matter to be taken back to the Supreme Court.

CHAPTER XV

PROCEEDING IN THE ABSENCE OF THE ACCUSED

In the case of indictable offences, the accused must be present, unless the Crown has the election of whether to proceed summarily or by indictment. If the Crown elects to proceed summarily, then the proceeding is just as it is for summary conviction offences, and the case can proceed *in absentia*, as it is sometimes called, i.e., in the absence of the accused, provided it is proved that he was served with the summons, or that he appeared on the last day the case was called.

In such case, a plea of not guilty is entered for the accused, and although it might seem a little silly, the statutory warnings, if any, must be read, as, for example, in a case of driving while impaired. At the end of the Crown's case, the magistrate should ask: "Are there any witnesses for the defence?" which seems a little silly, too, as he knows very well there are not. Nevertheless, the record should show that the accused or his counsel or agent had the opportunity of calling witnesses, even though none was there. In such a case, in imposing a fine, it is as well to allow time to pay, say 15 days, as undoubtedly the accused will be surprised to hear that he has been convicted in his absence.

CHAPTER XVI

THE INSANE AND THE MENTALLY ILL

So far as the Criminal Code is concerned, we are obliged to look at secs. 16, 451 (c) and (i), 523, 524, 525, 526 and 527.

If it is alleged that the accused was insane at the time the offence was committed, the correct plea is "not guilty," not, "not guilty by reason of insanity." Evidence is later adduced by the defence, and the magistrate proceeds according to sec. 523, bearing in mind the definition of insanity in sec. 16.

If it is alleged that the accused is, on account of insanity, incapable of conducting his defence, an issue will be directed, as provided for in sec. 524, and the magistrate will deliver one of two verdicts: the accused is not unfit on account of insanity to stand his trial, or the accused is unfit on account of insanity to stand his trial. In the former case, the trial proceeds; in the latter, the magistrate makes the order provided for in sec. 524 (4).

It is only on a preliminary inquiry that a magistrate may remand an accused for observation for a period not exceeding 30 days, if:

“(a) the accused is mentally ill; or

“(b) the balance of the mind of the accused is disturbed, where the accused is a female person charged with an offence arising out of the death of her newly-born child.”

(See sec. 451 (c).)

It will be noted that secs. 523-526 inclusive deal only with indictable offences. The Criminal Code does not cover persons charged with summary conviction offences where an accused person is alleged to have been insane at the time the offence was committed or to be unfit for trial by reason of insanity. However, it is clear that in such case, it would readily become

apparent to the authorities, who would either ask that the charge be withdrawn or proceed under either *The Mental Hospitals Act* or *The Psychiatric Hospitals Act*.

So far as *The Mental Hospitals Act* (R.S.O., 1960, chap. 236) is concerned, we should look at secs. 28, 29, 30, 31, 32, 33 and 38. There is set out the process by which a magistrate certifies a person to be mentally ill and sec. 38 empowers him to remand anyone to an institution (for observation and report) for a period of not more than 60 days if and only if he is charged with "an offence" which, of course, includes an offence against any Provincial Statute. But see sec. 31 (2), which provides one exception, if there is no charge laid, and the magistrate is merely hearing evidence on a charge, so to speak, of being mentally ill.

Dealing with *The Psychiatric Hospitals Act* (R.S.O., 1960, chap. 315), the powers of a magistrate are set out in sec. 9 (1) (e), but attention should be paid to the whole of sec. 9 and sec. 15. It will be observed that a magistrate may remand a person to a psychiatric hospital "for further observation, care or treatment where the person has been apprehended by a constable or other police officer . . ." and nothing is mentioned about the minimum length of time for which he may be remanded. A list of persons who may not be so remanded is set out in sec. 15.

CHAPTER XVII

COSTS

Contributed by

MAGISTRATE F. K. JASPERSON, Q.C.

The awarding of costs by a magistrate as part of the penalty to be paid by an accused person is a matter wholly within the magistrate's discretion, provided, of course, he has the legal power to impose costs. I suspect that there have been a great many cases in which magistrates have imposed costs where legally, they cannot be imposed, and many other cases where costs in excess of the tariff have been imposed.

INDICTABLE OFFENCES

Under the old Code (sec. 1044), a magistrate had power to award costs but under the new Code, he no longer has such power. Neither has the Court of Appeal (Code sec. 589 (3)).

The only exceptions to this statement are to be found in Code secs. 510 (5) and 631. Sec. 510 (5) reads:

Where, in the opinion of the court, the accused has been misled or prejudiced in his defence by a variance, error or omission in an indictment or a count thereof, the court may, if it is of opinion that the misleading or prejudice may be removed by an adjournment, adjourn the trial to a subsequent day in the same sittings or to the next sittings of the court and may make such an order with respect to the payment of costs resulting from the necessity for amendment as it considers desirable.

Code sec. 631 reads:

The person in whose favour judgment is given in proceedings by indictment for defamatory libel is entitled to recover from the opposite party costs in a reasonable amount to be fixed by order of the court.

CRIMINAL CODE SUMMARY CONVICTION OFFENCES

The discretionary award of costs by a magistrate, i.e., "the summary conviction court", is permitted by Code sec. 716, with which must be coupled the Schedule of Fees and Allowances that may be Charged by Summary Conviction Courts and Justices, commonly called "The Tariff", found in Code sec. 744. It will be observed that a counsel fee, either to Crown or defending counsel, is not mentioned, and hence, unauthorized. It is perfectly clear, no matter how discretionary a magistrate's award of costs may be, that he has no authority whatever to go beyond the Tariff in imposing costs as part of a penalty.

Code sec. 510 (5) is repeated in much the same language for summary convictions, and will be found in Code sec. 704 (6).

If we look at Code sec. 706, the words, "upon such terms as it considers proper", might be thought to include the right to award costs, either on a dismissal of the charge or an adjournment, against the Crown. This is at best doubtful, and until the matter is settled, a magistrate would be well advised not to make any award of costs in such circumstances.

The old Code (sec. 1081) dealt with suspended sentence and probation and provided (s.s. 3):

The court may, if it thinks fit, direct that the offender shall pay the costs of the prosecution, or some portion of the same, within such period and by such instalments as the court directs.

The Senate Committee's Report on the new Code, December 16, 1952, at p. 77, said: "We thought that if a person merited suspended sentence, he should not be required to pay something for the privilege of getting his sentence suspended." Accordingly, the old provision was omitted in the new Code, and even though Code sec. 638 (2) provides that "the court may impose such further conditions as it considers desirable in the circumstances . . .", this must not be held to include the power to award costs, as the power once existing has been taken away, and it seems abundantly clear that a magistrate has now no power to award costs as part of a condition imposed upon suspended sentence and probation.

PROVINCIAL STATUTES; SUMMARY CONVICTION OFFENCES

Here we must look at *The Summary Convictions Act*, R.S.O. 1960, Chap. 387, particularly sec. 9, to see the authority granted magistrates to award costs in these prosecutions, and sec. 3, by which we learn that the Tariff in the Code is made applicable to these prosecutions, to say nothing of the whole of Part XIV of the Code, dealing with Summary Convictions, and other parts of the Code as well.

Therefore, a magistrate is bound to observe the provisions of the Criminal Code in awarding costs under prosecutions under Provincial Statutes precisely as he is under the Criminal Code, with just three exceptions:

1. He may award a counsel fee (Act sec. 9 (5)).
2. Where he suspends sentence and orders probation, he may order that (the offender) "pay the costs of the prosecution or some portion of the same within such period and by such instalments as the justice, magistrate or court before which he is brought directs." (*The Probation Act*, R.S.O. 1960, Chap. 308, secs. 6, 5).
3. I have heard it said that Schedule of Fees, for example, the Schedules at the end of *The Administration of Justice Expenses Act*, have been invoked by magistrates and made part of the costs which they have awarded against offenders. This is very difficult to believe, but if so, it is a practice that is totally unwarranted and might conceivably bring a magistrate himself into the toils of the law.

However, there seems to be one exception to this statement, and it is to be found in ss. 14, 15 and 16 of Regulation 245 under *The Magistrates Act*. These subsections provide that a magistrate can award, as part of the costs against a party to a proceeding before him, stenographic reporter's fees calculated at the rate of \$2.50 per hour, but not to exceed \$10 for any one day, whether the reporter is on salary or not.

A STATED CASE

The provisions dealing with a stated case are to be found in Code secs. 733-742 inclusive, and so far as costs are concerned, we should look at sec. 738 (1) and (2) which provide:

- (1) Where a summary conviction court refuses to state a case, the appellant may apply to the superior court, upon an affidavit setting out the facts, for an order directing the summary conviction court and the respondent to show cause why a case should not be stated.
- (2) Where an application is made under subsection (1), the superior court may make the order or dismiss the application, with or without payment of costs by the appellant or the summary conviction court, as it considers appropriate in the circumstances.

It seems, therefore, that it would be just as well for a magistrate, when he is requested to state a case, to do so, rather than refuse simply because he may think the application is frivolous (see Code sec. 737); the superior court mentioned in sec. 738 (2) may not agree with him and may accordingly order him to pay costs.

CHAPTER XVIII

WHERE THE FINES GO

Contributed by

A. A. RUSSELL, Q.C., Inspector of Legal Offices

First of all, we should look at Code sec. 626, which deals with the disposition of fines imposed for not only offences described in the Criminal Code, but other offences which violate some federal statutes, as well. The section reads:

626.—(1) Where a fine, penalty or forfeiture is imposed or a recognizance is forfeited and no provision, other than this section, is made by law for the application of the proceeds thereof, the proceeds belong to Her Majesty in right of the province in which the fine, penalty or forfeiture was imposed or the recognizance was forfeited, and shall be paid by the person who receives them to the treasurer of that province.

(2) Where,

(a) a fine, penalty or forfeiture is imposed,

(i) in respect of a violation of a revenue law of Canada,

(ii) in respect of a breach of duty or malfeasance in office by an officer or employee of the Government of Canada, or

(iii) in respect of any proceedings instituted at the instance of the Government of Canada in which that government bears the costs of prosecution; or

(b) a recognizance in connection with proceedings mentioned in paragraph (a) is forfeited,

the proceeds of the fine, penalty, forfeiture or recognizance belong to Her Majesty in right of Canada and shall be paid by the person who receives them to the Receiver General of Canada.

(3) Where a provincial, municipal or local authority bears, in whole or in part, the expense of administering the law under which a fine, penalty or forfeiture is imposed or under which proceedings are taken in which a recognizance is forfeited,

- (a) the Lieutenant Governor in Council may, from time to time, direct that the proceeds of a fine, penalty, forfeiture or recognizance that belongs to Her Majesty in right of the province shall be paid to that authority, and
- (b) The Governor in Council may, from time to time, direct that the proceeds of a fine, penalty, forfeiture or recognizance that belongs to Her Majesty in right of Canada shall be paid to that authority.

(4) Where the proceeds of a fine, penalty, forfeiture or recognizance belong, by virtue of this section, to Her Majesty in right of the Province of Ontario, but a municipal or local authority in that province bears, in whole or in part, the expense of administering the law under which the fine, penalty or forfeiture was imposed or the recognizance was forfeited, the proceeds shall, notwithstanding anything in this section, be paid to that authority.

As for other fines imposed by magistrates in other jurisdictions than cities, we must look at *The Magistrates Act*, R.S.O. 1960, Chap. 226, sec. 18, which reads:

18.—(1) Except in the case of a magistrate assigned to a city, every magistrate, from the total amount of the moneys coming into his hands that would otherwise accrue to the treasurer of a municipality, shall deduct and pay such clerical, stationery, rent and other expenses of his court and office as are approved by the Inspector, and shall pay two-fifths of the balance of such moneys to the Treasurer of Ontario. 1952, Chap. 53, sec. 19.

(2) Where the total amount of the moneys coming into the hands of a magistrate that would except for subsection 1 accrue to the treasurer of a municipality is insufficient to

pay such clerical, stationery, rent and other expenses of his court and office as are approved by the Inspector, the amount of the deficiency shall be made up from any moneys in his hands that would otherwise be payable to the Treasurer of Ontario. 1954, Chap. 48, sec. 3.

So far as fines imposed by magistrates in cities are concerned, their distribution appears to be governed by sec. 17 (2) of *The Magistrates Act*, which reads:

17. . . .

(2) Every magistrate assigned to a city shall pay over the fees earned by him to the treasurer of the city.

The word "fees" is construed to mean "fees, fines and costs", and although the legislation could be more explicit, no difficulties have arisen in such construction of the statutes.

FINES IMPOSED UNDER THE HIGHWAY TRAFFIC ACT

The disposition of these fines is clearly set out in *The Highway Traffic Act*, R.S.O. 1960, Chap. 172, sec. 151, which reads:

151.—(1) The fines collected for offences under this Act shall be paid over,

- (a) where the offence was committed in a city or town on any highway except a controlled-access highway, to the city or town;
- (b) where the offence was committed in a village or township;
 - (i) on any highway except the King's Highway, or
 - (ii) that has an agreement under subsection 2, to the village or township; and
- (c) in every other case, to the Department.

(2) The Minister and the council of any village or township may enter into agreement upon such terms and conditions as the Minister deems proper, including the right of the Minister to terminate the agreement at any

time, for the payment over to the village or township of the fines collected for offences under this Act where the offence was committed on the King's Highway except a controlled-access highway in the village or township and where the information and complaint was laid by a constable of a village or township. 1956, Chap. 29, sec. 13.

It should be noted that whether the penalty is treated as a provincial or municipal fine, it is determined by the place in which the offence was committed. Once designated, a municipal fine is distributed in accordance with the provisions of *The Magistrates Act*, as above set out.

FINES IMPOSED UNDER THE LIQUOR CONTROL ACT AND THE LIQUOR LICENCE ACT

These are provided for by the provisions of *The Liquor Licence Act*, R.S.O. 1960, Chap. 218, sec. 87, which reads:

87. Subject to the approval of the Lieutenant Governor in Council, the Board may enter into an agreement with the council of any municipality for the enforcement in the municipality by the council of this Act, *The Liquor Control Act* and the regulations hereunder and thereunder, and may in such agreement provide for the payment to the council of,

- (a) a portion of the fees for licences issued in respect of establishments in the municipality; and
- (b) the fines or a portion of the fines imposed in prosecutions instituted by officers designated by the council pursuant to the agreement, for a contravention of this Act, *The Liquor Control Act* or the regulations hereunder or thereunder in the municipality. R.S.O. 1950, Chap. 211, sec. 83.

FINES IMPOSED UNDER FEDERAL STATUTES NOT MENTIONED IN THE CRIMINAL CODE

Unless the statute provides where the fines shall go, it would be wise to pay these fines to the municipality in which the offence occurred, pending any possible claim from the federal government. The municipality can take care of the matter from there on.

**FINES IMPOSED UNDER PROVINCIAL STATUTES NOT
HITHERTO MENTIONED**

Unless the statute provides where the fines shall go, they should be sent to the municipality in which the offence occurred. As in the case of fines imposed under federal statutes not mentioned in the Criminal Code, if the provincial authorities make any claim, the matter can be settled between the provincial and the municipal governments.

FINES IMPOSED UNDER MUNICIPAL BY-LAWS

These go to the municipality in which the offence was committed.

CHAPTER XIX

MARRIAGES

Presumably, the reasons why people want to be married by magistrates are to save the money an elaborate ceremony would cost, to facilitate their marriages (since clergymen of some religious denominations will not marry divorced persons), to have the thing over with as quickly as possible, or in many cases, to avoid the religious atmosphere that hovers over the ceremony when it is performed by a clergyman.

A magistrate need only pay attention to the last reason and consequently, should avoid, in his conduct of the ceremony, any religious overtones, or the quoting of scripture, or anything of the sort. The ceremony, however, should be conducted with dignity and in a clean, tidy room (*The Marriage Act*, R.S.O. 1960, chap. 228, provides that the marriage be solemnized in "the magistrate's office" (sec. 26)).

A suggested ceremony is as follows:

Magistrate: "We are together for the purpose of joining this man and this woman in matrimony.

"Marriage was ordained for the creation of a union between man and woman and for the mutual society, help and comfort in both prosperity and adversity.

"If any of you present can show just cause why these two persons may not be lawfully joined together, you should now declare it or hereafter forever hold your peace."

Each of the parties should then in turn say:

"I do solemnly declare that I do not know of any lawful impediment why I, AB, may not be joined in matrimony to CD" (*Marriage Act*, sec. 26 (3)).

Then each of the parties should say in turn:

"I call upon these persons here present to witness that I, AB, do take thee, CD, to be my lawful wedded wife (or husband)." (*Marriage Act*, sec. 26 (3)).

Then the magistrate says:

"I, EF, a magistrate of the Province of Ontario, by virtue of the power vested in me by *The Marriage Act*, do hereby pronounce you, AB and CD, to be husband and wife." (*Marriage Act*, sec. 26 (3)).

Rather than handle the fee of \$10.00 himself, the magistrate should have his clerk collect the fee before the ceremony.

It should not be necessary to mention, but I'm afraid it is, that a magistrate should not accept a gratuity or a gift from the happy bridegroom, nor let his clerk do so, either on his own or the magistrate's behalf.

All the various forms required to be completed pursuant to the provisions of *The Marriage Act* may be obtained from the Provincial Secretary, Parliament Buildings, Toronto.

CHAPTER XX

CONVICTING THE INNOCENT

A magistrate lives with one perpetually gnawing fear, or perhaps a better word is horror: that some day he will convict someone who is later proved to have been wholly innocent. It is not meant by this that he might convict someone, whose conviction is later quashed by a County or District judge sitting *de novo*, that is, trying the case all over again from the beginning, just as if there had been no trial at all. The evidence adduced before a judge may be entirely different for one thing, as it is not at all unusual for counsel to use the trial before the magistrate as a sort of preliminary inquiry; there he finds out the Crown's entire case, and can use it in his thorough preparation for the trial before the judge; he may have been taken by surprise in the trial before the magistrate; but the Crown will have no surprises for him in the trial before the judge.

Nor is it meant that a magistrate should fear what a Court of Appeal does with his conviction or sentence. If the magistrate has convicted the accused and the Court of Appeal quashes the conviction, they are not saying that the accused was innocent; they are simply saying that his guilt was not proved beyond a reasonable doubt, even though the convicting magistrate thought it was. And the Court of Appeal may still be wrong in law and the magistrate right; many cases have been decided by the Supreme Court of Canada in which provincial Courts of Appeal, although unanimous, have been declared to have been in error and a magistrate right.

In 1932, a shocking book was published: Edwin M. Borchard's *Convicting the Innocent* (Garden City Publishing Co., Inc., Garden City, N.Y.). Borchard, who was a Professor of Law at Yale, dealt with 65 cases where it had been unquestionably proved that accused persons who had been convicted were actually innocent. Some had been hanged. Two cases were English; two were Scottish and the rest were from the United States. The cause of the improper convictions was in nearly

every case the acceptance by the court of false or insufficient evidence of identification. Most readers will remember the Scottish Oscar Slater and the English George Edalji cases: both appalling miscarriages of justice.

In one case reported by Borchard, a man was convicted of armed robbery on the sole evidence of a woman who identified him as the man who entered her house, threatened her with a pistol from which he fired two shots to frighten her, stole a sum of money, and left her securely tied up. The trial took place 18 months after the alleged offence, yet the woman described the accused at the time the offence was committed, as to colour of hair, wearing glasses (which he was at the trial), moustache (which he was wearing at the time of the trial), shade of complexion (which tallied with that of the accused in the box), height (exact), weight (within five pounds) and general appearance. He was sentenced to 20 to 30 years. After he had served nearly twelve years of his sentence, a prisoner in another penitentiary made a death-bed confession, in which he admitted that it was he and not the other man who had committed the robbery. This was followed by intensive police investigation which made it abundantly clear that the death-bed confession was true, and the originally convicted man was pardoned. The ironic twist about the case was that in the death-bed confession, the real robber said that his hair was red (the other man's had been described by the witness as "a dirty dark brown"), he had never worn a moustache or glasses in his life and at the time of the hold-up, he had worn an opaque stocking over his head throughout the whole time he was seen by the identifying witness.

In 1953, R. T. Paget, Q.C., M.P., and S. S. Silverman, M.P., wrote a provocative book called *Hanged and Innocent?* in which they dealt with the three celebrated English cases of Walter Graham Rowland, Derek Bentley and Timothy John Evans. The question-mark at the end of the book's title, if we are to accept the reasoning of the authors, should be a period instead.

Then in 1957, the book, *Not Guilty*, was published by Frank Doubleday & Co., Inc., Garden City, N.Y. It was started by Judge Jerome Frank, who died during its writing, and was finished by his daughter, Barbara. It is just as shocking as its predecessor, *Convicting the Innocent*, and reports 34 cases, all in the United States, in which convicted persons were later proved to be innocent.

As recently as December 15, 1961, a woman who had masqueraded as a man was convicted of bigamy in Grady, Arkansas, for "marrying" two women. She was sentenced to two years.

So far as I am aware, there is no Canadian counterpart of any of the cases referred to in *Convicting the Innocent* and *Not Guilty* in Canada's history. That is not to say it has never happened in Canada, but over many years I have tried to run down any reports I have heard about such a case and all turned out to be false. Many judges and lawyers have told me that they know of such a case (one judge told me he knew of several such cases) and I have invariably asked them if they would be kind enough to let me know the information they had. Just as invariably the name(s) of the cases had slipped their minds, but they would look it (them) up, and write me fully. I have never heard from any of them.

If, however, it is a fact that there is no such case in Canada's history, then surely, this is a record of which no other country in the world can boast.

The law which magistrates are bound to follow on the subject of identification is clearly set out in the learned judgment of The Honourable Mr. Justice J. Keiller Mackay in *Regina v. Smith*, 103 C.C.C., 58, who says at p. 61:

If the identification of an accused depends upon unreliable and shadowy mental operations, without reference to any characteristic which can be described by the witness, and he is totally unable to testify what impression moved his senses or stirred and clarified his memory, such identification, unsupported and alone, amounts to little more than

speculative opinion or unsubstantial conjecture, and at its strongest is a most insecure basis upon which to found that abiding and moral assurance of guilt necessary to eliminate reasonable doubt.

In *R. v. Harrison* (1951), 100 C.C.C. 143 at p. 145, O'Halloran, J.A. quoted as follows from his judgment in the earlier case of *R. v. Brown & Angus* (1951), 99 C.C.C. 141 at p. 147: " 'A positive statement "that is the man" when rationalized, is found to be an opinion and not a statement of single fact. All a witness can say is, that because of this or that he remembers about a person, he is of opinion that person is "the man". A witness recognizes a person because of a certain personality that person has acquired in the eyes of the witness. That personality is reflected by characteristics of the person, which, when associated with something in the mind of the witness causes the latter to remember that person in a way the witness does not remember any other person.' "

In addition, the cases, *Rex v. Yates*, 85 C.C.C. 334 and *Rex v. Browne and Angus*, 99 C.C.C., 141 should be looked at in contemplating the vexed question: When is identification of an accused person sufficient?

CHAPTER XXI

MAGISTRATES' SHORTHAND

After a few months, a magistrate should be able to take notes of a trial just about as quickly as a court reporter, and it is important that he takes such notes, as court reporters are not always as efficient as they should be, and on many occasions, I have found transcripts of evidence prepared for the Court of Appeal to be in error.

To take notes of the evidence quickly, a magistrate will take down only the answers of a witness; for example, let us consider the following questions and answers:

Counsel: And when the accused saw the previous witness, what did the accused do then?

Witness: He pulled out this knife.

Counsel: Indicating Exhibit 2. Yes, and then what?

Witness: He made a pass at that guy Smith with it.

Counsel: Precisely what did he do, though? You must remember we weren't there.

Witness: Well, he had the knife in his right hand and he pulled his hand back and tried to cut Smith in the stomach.

If the magistrate were recording this in longhand, it would go like this:

Accused pulled out Exhibit 2; with right hand, tried to cut Smith in stomach.

But using a form of Magistrate's shorthand, it would come out:

acc. pld. ex EX2, r. hnd, trd cut S in stom.

It would take a magistrate a good deal of time to learn any of the conventional shorthand systems, but there is no

reason why he can't invent a system of his own. I am sure that many magistrates have their own method of making various abbreviations, but just in case they would welcome suggestions, I am setting out some of the devices and symbols I use to make my notes just as exhaustive as any court reporter's, without the waste of time in recording the questions.

It is often necessary for a magistrate to refer to his notes of a trial years after the trial itself, and they should be fully and meticulously taken and kept in their note-books for as long as one is a magistrate, perhaps longer.

The following symbols are just some of the ones I use myself; countless others will occur to readers; what is wrong, for example, with using "n" to mean in, on, upon, and or no?

<u>SUGGESTED SYMBOL</u>	<u>YOUR SYMBOL</u>
N	nobody, north
α	accused, and (the Greek alpha)
<i>wdam</i>	wilful damage
π	Crown, complainant (the Greek pi)
<i>(g)</i>	guilty
<i>(ng)</i>	not guilty
S	summarily
I	by indictment
<i>susp</i>	suspended
<i>dsusp</i>	drove while disqualified or licence suspended
<i>wdrn</i>	withdrawn

SUGGESTED SYMBOLYOUR SYMBOL

@	around, about, account
<i>dr lic</i>	driver's licence
S. S.	Suspended Sentence
<i>Pro</i>	Probation
N. R.	No record
N. T. R.	No Traffic Record
<i>trbl</i>	trouble
L	corner
X ^{or}	intersection
<i>slo</i>	slow
<i>rec</i>	record
<i>rec pl</i>	record player
<i>sep sch</i>	separate school
<i>p. sch</i>	public school
<i>hi sch</i>	high school
<i>knf</i>	knife
⊕	some, somebody, someone, any, anybody, anyone
⊙	all, everything
<i>ad</i>	towards (Latin)

SUGGESTED SYMBOLYOUR SYMBOL

<i>ex</i>	out of (Latin)
<i>tel</i>	telephone
<i>tel'</i>	telephoned
<i>pol</i>	police
<i>pols</i>	policemen, police officers
<i>drg</i>	driving
<i>of wp dpp</i>	offensive weapon dangerous to the public peace
<i>nu</i>	knew
<i>chg</i>	charge
<i>info</i>	information
<i>blk</i>	block
<i>pk</i>	park
<i>w</i>	when, where, what, who
<i>c</i>	with
<i>co</i>	without
<i>h</i>	how
<i>α el me</i>	accused elected to be tried by a magistrate
<i>→</i>	went
<i>←</i>	came

SUGGESTED SYMBOLYOUR SYMBOL

<i>o/</i>	the owner of, owned by, owned
<i>al</i>	other, else, others, elsewhere
<i>dam</i>	damage
<i>arrd</i>	arrived, arrested
<i>n' rem w hppd</i>	I don't remember what happened
<i>n'</i>	(the negative) e.g., n' → (never went) or n' go (doesn't go)
<i>ck</i>	cheque
<i>end'</i>	endorsed
<i>la</i>	there (French for "there")
<i>l.</i>	living
<i>b4</i>	before
<i>bkpr</i>	bookkeeper
<i>bmkr</i>	bookmaker
<i>\$</i>	money, currency, dollars
<i>amt</i>	amount
<i>wk</i>	work
<i>Ex</i>	Exhibit
<i>sd</i>	said

SUGGESTED SYMBOLYOUR SYMBOL

<i>fr</i>	from
<i>1-jan</i>	1 January
<i>1-f</i>	1 February
<i>1-mch</i>	1 March
<i>1-ap</i>	1 April
<i>1-ma</i>	1 May
<i>1-jn</i>	1 June
<i>1-jl</i>	1 July
<i>1-ag</i>	1 August
<i>1-s</i>	1 September
<i>1-o</i>	1 October
<i>1-n</i>	1 November
<i>1-d</i>	1 December
<i>115-a</i>	1:15 a.m.
<i>115-p</i>	1:15 p.m.
<i>12 N</i>	12 noon
<i>12 M 6-7 ap</i>	12 midnight 6-7 April
<i>-sbd</i>	southbound, and for other points of the compass

SUGGESTED SYMBOLYOUR SYMBOL

X	wrong, intersection
<i>trav</i>	travelling
<i>imp</i>	improper
<i>Z'd</i>	zig-zagged
<i>dr</i>	door
<i>lff</i>	left front fender
<i>rff</i>	right front fender
<i>lrf</i>	left rear fender
<i>rrf</i>	right rear fender
<i>c ba hse</i>	common bawdy-house
<i>c bet hse</i>	common betting-house
<i>c gam hse</i>	common gaming-house
<i>sch war</i>	search warrant
<i>premis</i>	premises
<i>fro dr</i>	front door
<i>b dr</i>	back door
<i>bet</i>	between
<i>bet</i>	betting
<i>beh</i>	behind

SUGGESTED SYMBOLYOUR SYMBOL

<i>wf</i>	wife, husband
<i>mo</i>	month
<i>mos</i>	months
<i>Kn</i>	contract
<i>mdse</i>	merchandise
<i>invq</i>	investigate
<i>invq</i>	investigating
<i>1ce</i>	once
<i>2ce.</i>	twice, etc.
<i>exd</i>	executed, examined
<i>pd</i>	paid
<i>stn</i>	station
<i>brk</i>	broke
<i>entd</i>	entered
<i>& try car drs</i>	the accused was trying car doors
<i>val</i>	value, valued at
<i>nit</i>	night
<i>prev</i>	previous

SUGGESTED SYMBOL

YOUR SYMBOL

<i>nit b+</i>	previous night
<i>emp</i>	employer, employee, employ, employed
<i>lr.</i>	letter
<i>o</i>	nothing, none
<u><i>x</i></u>	cross examination
<u><i>xx</i></u>	re-examination
<i>6#</i>	6 pounds
<i>6^x</i>	6 yards
<i>6'</i>	6 feet
<i>6"</i>	6 seconds

DRUNK AND IMPAIRED DRIVING CASES

In these cases, it is easy to devise a set of symbols for the evidence we hear, because the evidence is the same as we have heard countless times. Consequently, the symbols that follow can be readily used in these cases without any likelihood that some months later, we will have forgotten what they were supposed to mean.

DRUNK AND IMPAIRED DRIVING SHORTHAND

<i>-sl</i>	smelled of liquor
<i>ssl</i>	smelled strongly of liquor
<i>uof</i>	unsteady on his feet

SUGGESTED SYMBOLYOUR SYMBOL*stag*

staggering

stbl

stumbling

*p. d.*the pupils of his eyes
were dilated*is bld wty*his eyes were bloodshot
and watery*x impd*

accused was impaired

x dk

accused was intoxicated

*br test 1.7*after cleaning the breathalyzer
machine and giving it a test
run with a reading of zero, I
took a sample of the accused's
breath and the reading on the
breathalyzer was 1.7 parts per
thousand of alcohol in his
blood*150 x*with the accused's body weight
of 150 pounds, the reading of
1.7 indicated that in his
system at the time the test
was taken were the equivalent
of six bottles of beer or nine
ounces of standard liquor*6 be**sway*

swaying

stag

standing

*ef al ob*the effects of alcohol were
obvious*intd*

interviewed

SUGGESTED SYMBOLYOUR SYMBOL

j. md
i/c

jocular mood

in charge

Now, let us take a typical case, as recorded in my shorthand:

Bannon for P

John Arsenault 20 Dr. ab impd S (g) N
for α P-17 d 715-p. α ebd on L S Rd - wear
inter c traf - α p. awā hi-r spd, chased
by pol - stpd - α ssl - is bld - uof - α
impd br test 2.1 - n' acc -.

NTR

100 or 7

From the above, an actual case taken directly from my notes, we see that John Arsenault, aged 20, was charged with driving while his ability was impaired. Mr. Bannon appeared for the Crown; no one appeared for the accused. The Crown elected to proceed summarily and the accused pleaded guilty. The Crown said: "On December 17, 1961, at 7.15 p.m., the accused was eastbound on Lake Shore Road and driving his car which was weaving and interfering with traffic. The accused pulled away at a high rate of speed and was chased by the police and stopped. The accused smelt strongly of liquor; his eyes were bloodshot; he was unsteady on his feet; he was impaired by alcohol. He was given a breath test with a breathalyzer and the reading was 2.1. There was no accident."

The accused having no traffic record, I fined him \$100 or 7 days.

CHAPTER XXII

CONTEMPT OF COURT

Section 457 of the *Criminal Code* deals with recalcitrant witnesses at a preliminary inquiry and provides that a justice (which includes a magistrate, of course) may adjourn the inquiry and commit the offender to gaol for a period not to exceed eight clear days, and so on from time to time until the witness consents to do what is required of him. A warrant of committal* shall be signed by the committing justice and Form 16 (Code) shall be employed for this purpose.

Sections 610 and 612 of the Code deal with that form of contempt of court committed by witnesses who are subpoenaed or bound over to attend or remain in attendance and fail to do so. Form 12 of the Code should be employed when a bench warrant is issued for such a witness and in addition, a witness who has offended sec. 612 may be summarily dealt with by a fine of \$100 or imprisonment for 90 days or both. Both magistrates and justices of the peace have this power.

Section 514 of the Code deals with disobedience of an order by a magistrate (although not a justice of the peace) releasing a court exhibit for scientific examination and provides that such disobedience is contempt of court and may be dealt with summarily.

Section 8 of the Code retains the powers magistrates and justices of the peace had to commit offenders for contempt of court under the common law and sec. 9 provides, for the first time in our criminal law, for an appeal from conviction or (not "and") sentence to the Court of Appeal. See also sec. 426, Code.

*The terms "warrant of commitment" and "warrant of committal" are apparently synonymous and are employed to follow the precise language of the courts' judgments in the cases cited.

JUSTICES OF THE PEACE AND CONTEMPT OF COURT

A justice of the peace has not the power summarily to punish contempts in the face of the court, at any rate, without a formal adjudication and a warrant (of committal) setting out the contempt: *Young v. Saylor* (1893), 23 O.R. 513 and 536.

A justice of the peace has the power to remove persons who, by disorderly conduct, obstruct or interfere with the business of the court: *Idem*.

Young v. Saylor appears to be the leading case on the subject of the powers of a justice of the peace to deal with contempt in the face of the court and the authorities are exhaustively reviewed in the judgments of Armour, C.J. and Falconbridge and Street, JJ.

The court of a justice of the peace is not a court of record and his authority is limited to that expressly given him by statute. No statute, therefore, having given him the power to punish contempt of court by fine or imprisonment, even if it is committed in the face of the court, it is questionable whether his authority extends beyond exclusion of the person offending (except insofar as provided by the Code).

Even to attempt to do so with a formal adjudication and a proper warrant of committal would be dangerous, as the law on this point is doubtful and unsettled.

However, an offender can be dealt with by prosecuting him for obstructing a peace officer under sec. 110 of the Code, since a justice of the peace is a peace officer, which a magistrate is not (sec. 2 (30), Code), or for causing a disturbance (sec. 160, Code).

In case a justice of the peace orders the exclusion from the court of a person acting in an improper manner, it would be prudent for him to make a written order directed to a police constable, directing such exclusion and stating the grounds and the particulars of the contempt or other improper conduct—*Seager's Criminal Proceedings Before Magistrates and Justices of the Peace*, 3rd ed., p. 129.

MAGISTRATES AND CONTEMPT OF COURT

A magistrate has power not only to order an expulsion by force, but also to commit to gaol, a person guilty of contempt by insulting him, or otherwise, when acting in his judicial capacity, but not when acting ministerially: *Young v. Saylor* (*supra*); in *Re Reiben* (1919), 30 C.C.C. 271.

A judicial act is one where the magistrate exercises a discretionary or judicial power; a ministerial act is one which he is obliged to perform as a matter of course: *Staverton v. Ashburton* (1855), 4 E. & B. 526; *Paley on Summary Convictions*, 9th ed.,* pp. 77-79.

The following are examples of judicial acts: admitting to bail: *Lindford v. Fitzroy* (1849), 13 Q.B. 240; issuing a summons or warrant to arrest: *R. v. Ettinger* (1899), 3 C.C.C. 387; taxing costs: *R. v. Cambridge Recorder* (1857), 8 E. & B. 637; taking evidence, granting remands, hearing and adjudicating on the case: *R. v. Benn* (1795), 6 Term Rep. 198, see also *Harper v. Carr* (1797), 7 Term Rep. 270; *Painter v. Liverpool* (1836), 3 A. & E. 433; *Skingley v. Surridge* (1843), 11 M. & W. 503; *Paley*, 9th ed., pp. 78, 79.

The following are ministerial acts which may be done anywhere: Taking an information: *Thompson v. Desnoyers* (1899), 3 C.C.C. 68; issuing a certificate of dismissal: *Hancock v. Somes* (1859), 28 L.J.M.C. 196; *Costar v. Hetherington* (1859), 28 L.J.M.C. 198; *Paley*, 9th ed., pp. 78, 79; backing a warrant: *Clark v. Woods* (1848), 2 Exch. 395; *R. v. Kynaston* (1800), 1 East 117; *Dews v. Riley* (1851), 11 C.B. 434; issuing a distress warrant or commitment: *R. v. Fleming* (1895), 27 O.R. 122; swearing affidavits or statutory declarations: *Seager*, pp. 99, 100.

The exercise of the power of exclusion or punishment for contempt should be done with great forbearance, and not hastily, or under feelings of exasperation, however natural; but the sole view to the maintenance of proper order and decorum during the prosecution of the magistrate's judicial proceedings:

**Paley's* 9th edition is quoted herein for various propositions; the 10th edition is mysteriously silent on contempt of court.

Heywood v. Wait (1869), 18 W.R. 205; *Day v. Carr* (1852), 7 Exch. 887. Where the liberty of the subject is involved, the utmost strictness in procedure is essential: *Desrochers v. Quebec Liquor Commission* (1921), 37 C.C.C. 17.

The magistrate should be careful that the misconduct justifies the order for exclusion (or the penalty imposed for contempt of court) and that he has not by his own words or conduct been to blame: *Clissold v. Machell* (1865), 25 U.C.Q.B. 80; (1867), 26 U.C.Q.B. 422.

If a magistrate in the exercise of his jurisdiction is defiantly disobeyed, he may commit the offender instantly for contempt: *Watt v. Ligertwood* (1874), L.R. 2 Sc. & Div. 361.

The contempt may be committed either by language or manner, and even by language which might not in itself be offensive, if it is uttered offensively: *Carus Wilson's Case* (1845), 7 Q.B. 984; *Ex parte Lees and County Judge, Carleton* (1873), 24 U.C.C.P. 214; *Re the Judge of the Division Court, Toronto* (1864), 23 U.C.Q.B. 376; *R. v. Strike* (1921), 37 C.C.C. 21. In the *Strike* case, the contempt was refusing to answer questions, and the penalty imposed, two years.

An order or warrant made while the offender is in court may be enforced notwithstanding he may have gone outside before arrest: *Mitchell v. Smyth* (1894), 2 Ir. R. 351.

A person indemnifying another against the consequences of contempt involves himself in the same contempt: *Plating Co. v. Farquharson* (1881), L.R. 17 Ch. 49.

It is not clear that a magistrate can punish for contempt committed while he is executing his duty in his own house and not proceeding in any court: *McKenzie v. Mewburn* (1849), 6 U.C.Q.B. (O.S.) 486. The same case decides that if a magistrate commits a person for contempt he must proceed regularly to convict for the offence, that is, he must call upon the offender to defend himself and show cause why he should not be convicted; he should hear evidence and anything the offender or his counsel may have to say, and enter an adjudication, convicting the offender and awarding punishment; and he should issue a formal

warrant of commitment under his hand and seal*, and setting out the contempt: *Chang v. Piggott*, (1909) A.C. 310, applied, *Re Fisher* (1915), 24 C.C.C. 125. But see *Watt v. Ligertwood* (*supra*).

The commitment should be in writing and provide a definite term: *Armstrong v. McCaffrey* (1869), 12 N.B.R. 525.

The particulars of the insult need not be stated in the commitment: *Levy v. Moylan* (1850), 10 C.B. 188.

The committal should be by warrant setting out the facts constituting the contempt and must be made for a definite period: *Ex parte Pater* (1864), 5 B. & S. 299.

For a person to say of a magistrate (or justice of the peace) in court in reference to his judgment, "That is a most unjust remark," is a wilful insult and contempt: *R. v. Jordan* (1888), 36 W.R. 589, 797.

It is contempt of court to reflect in any way on the honesty or impartiality of the magistrate (or justice of the peace): *R. v. Skipworth* (1873), 12 Cox 371; *Young v. Saylor* (*supra*); *In Re Reiben* (*supra*).

The warrant for commitment must show on its face that there was a good and valid conviction: *In Re Reiben* (*supra*).

An opportunity must be given to the offender to defend himself; the warrant of commitment is invalid otherwise: *In Re Reiben* (*supra*).

THE WARRANT OF COMMITTAL FOR CONTEMPT OF COURT

It will be noted that the Code provides three forms of a warrant of committal for contempt of court: Form 16 for a contempt committed in violation of sec. 457 and Forms 22 and 34 for a contempt committed in violation of sec. 612. None, however, is provided for contempt committed in the face of the court.

*A seal is not now necessary.

**THE WARRANT OF COMMITTAL FOR CONTEMPT
COMMITTED IN THE FACE OF THE COURT**

On the basis of the authorities reviewed above, it appears there are three ways to proceed before a warrant of committal for contempt committed in the face of the court is signed by the magistrate:

1. The offender, immediately after his offensive action or statement, is summarily convicted of contempt of court and sentenced to either a fine or a fixed term of imprisonment. It should be noted that there is no maximum for either fine or imprisonment, but an improper or excessive sentence is now reviewable on appeal.
2. From the prescribed form of the warrant of committal in *Seager (supra)*, we find that the offender was first served with a summons to appear before the offended magistrate to show cause why he should not be committed for contempt of court and having failed to do so, he was convicted and sentenced.
3. The offender, immediately after his offensive action or statement, is asked at once by the magistrate to show cause why he should not be committed for contempt of court; the magistrate should ask the offender if he has any witnesses to call and if so, they should be heard; and he should hear all that the offender and his counsel, if any, have to say. Then and only then he should say words to the effect of: "I find A.B. guilty of contempt of court and sentence him to (for example) 60 days' imprisonment (or fine him (for example) \$100 in default of which he will serve 20 days' imprisonment)".

By far the most prudent method of proceeding is by employing the third alternative. Having done so, therefore, it is only necessary to prepare and sign a warrant of committal. A suggested form follows:

WARRANT FOR COMMITAL FOR CONTEMPT OF COURT

Canada

Province of Ontario

County of.....

To the peace officers of the (*municipality*) and to the keeper of the common gaol at (*place*) in the said County:

Whereas, on the.....day of....., 19....., at the.....of.....in the said County, one John Doe was brought before me, then and now a magistrate for the Province of Ontario, and the said John Doe was then charged before me upon the information of Richard Roe that he, the said John Doe, on the 6th day of August, 1958, while his ability to drive a motor vehicle was impaired by alcohol, drove a motor vehicle;

And whereas, after I had convicted the said John Doe and said: "The evidence clearly indicates that the accused should have been charged with drunk driving," Adam Black, counsel for the said John Doe, said to me, "That is a most unjust remark," in open court, and in the presence and hearing of divers subjects of our Sovereign Lady, the Queen, to the scandal and reproach of the administration of justice in this Province, and to the great scandal of me as a magistrate of the Province of Ontario, in contempt of our said Sovereign Lady, the Queen, in open violation of the laws of this Province, and to the evil and pernicious example of all others in like case offending;

And whereas I then and there asked the said Adam Black to show cause by calling witnesses or otherwise, why he should not be committed for contempt of court and the said Adam Black having failed to do so,

I adjudged him guilty of contempt of court and I further ordered and adjudged that the said Adam Black should be committed to the common gaol of the County of..... for the term of.....days or should pay a fine of \$....., to be paid and applied according to law and that in default of such payment being made forthwith, he should be committed to the common gaol of the County of.....for the term of.....days;

(*And whereas payment of the fine or any part thereof has not been made*).

These are therefore to require and command you to take the said Adam Black and safely convey him to the common gaol at.....in the County of....., and there deliver him to the keeper thereof with this warrant;

And I command you, the said keeper of the said common gaol, to receive the said Adam Black into your custody in the said common gaol, there to imprison him for the term of..... days from the time of his arrest under this warrant (*unless the said fine amounting to \$.....is sooner paid*) and for your doing so, this shall be your sufficient warrant and authority.

Given under my hand this.....day of....., 19....., at.....in the County of.....

(Signature)

Magistrate for the Province of Ontario.

So much for the law.

In actual practice, however, it should hardly ever be necessary to invoke the law to deal with an obvious contempt. I have done it only once in over 17 years as a magistrate, and I am not sure that I would do it again in the same circumstances. Lillian Johnston, age 56, appeared for sentence on her seventh conviction within the year for public intoxication, and said: "Your Worship, I have never had a break in this court; all I am asking for is just one little break." I thought I was giving her a break when I imposed the statutory minimum, but she then said, "So you call that a break, do you, you grey-haired old son of a bitch!" (This was a particularly unkind remark, as I was at least ten years younger than she was at the time.) I said as quietly as I could, "I'm sorry you said that; I find you guilty of contempt of court and you will go to a gaol for 30 days; this sentence to run consecutively to the first." Her following remarks cannot, I regret to say, be published without violating sec. 150 of the *Criminal Code*. She was removed as quickly as possible, and the spectators seemed to be vastly amused. However, Lillian Johnston had given other magistrates a good

deal of trouble in her many appearances for public intoxication, and she appeared before me many times afterwards. But after her appearance before me on the occasion I have mentioned, she behaved like a perfect lady, hangover and all.

But I am not sure that I would handle the matter in the same way today. I have found that there is a great deal of magic in the words, "Behave yourself!" when used by a magistrate to someone who is offending good manners in a courtroom. Why this is so, I have never been able to understand, but today, I would, I think, give Lillian Johnston her one chance to behave herself, and then, if she persisted in her atrocious conduct, I would proceed as I have indicated in the third alternative above.

As for contempt of court committed by a lawyer in the face of the court, it is really very simple to deal with the matter without fining or imprisoning the lawyer, or threatening him with action on his contempt. There are some lawyers, and all magistrates know them, who in their advocacy seem to assume an attitude that the magistrate, the Crown Attorney and the police are involved in a gigantic and wicked conspiracy to bring about the conviction of innocent men, viz., their clients. Let us go back to the mythical Adam Black and see how a tolerant magistrate might have handled the matter:

Magistrate: The accused should have been charged with drunk driving.

Mr. Black: That is a most unjust remark!

Magistrate: I'm sure you didn't really mean that, Mr. Black.

Mr. Black: I meant precisely what I said.

Magistrate: Those words, Mr. Black, are perilously close to contempt of court; I hope you will do the court the courtesy of withdrawing them.

Mr. Black: I withdraw nothing.

Magistrate: Very well, then, Mr. Black, I am afraid I must ask you to withdraw from this case and the courtroom.

Mr. Black will usually leave the court-room under his own power, but if he refuses to, a nod from the magistrate to one or two police officers — or how many may be needed — will bring about his speedy removal. No attention should be paid to any scurrilous or abusive remarks as Mr. Black leaves or is escorted from the court-room. In the eyes of those present, Mr. Black has been adequately punished for his impertinence—he has lost a client—and the magistrate is left with his dignity unimpaired.

Provided, however, he has acted in a calm and dispassionate manner. He should never raise his voice or show any signs of anger in any exchange between the lawyer and himself, no matter how inwardly angry he may be. It is a poor magistrate who loses his temper on the bench, or who appears to.

In the event you have asked a lawyer to withdraw from the case and leave the court room, the case should never be proceeded with. The unfortunate accused has been deprived of counsel in the middle of a case through no fault of his, so it should be obvious that the case should be remanded to give the accused ample opportunity to retain another lawyer who in turn, will have ample opportunity to prepare his defence.

There is another form of contempt of court in the face of the court which I have dealt with on more than one occasion, and that is the making of excessive noise in the immediate vicinity of the court-room. In all cases with which I have dealt, it involved the use of pile-drivers or rivetting machines or the like on or near a building adjacent to the court. There is no case law on the subject, but it seems to me that the making of sufficient noise to make it difficult or impossible to hear what is going on in a court-room is contempt in the face of the court, once the maker of the noise has been told to stop making the noise. My usual practice has been to send a police officer to the man or men responsible for making the noise with a message from me to suspend their operations during the hours the court is sitting. On one occasion, the noise-maker made a very rude reply to the police officer, so I adjourned court and had him brought to my office, where I enlightened him on a few points of law, such as the fact (as it then was) that I could sentence

him to life imprisonment if he failed to carry out my order and that there was no appeal from my sentence. There was no more noise.

Perhaps in conclusion, it should be emphasized that a magistrate has power to commit for contempt only in the face of the court. It is no offence to tell a magistrate what you think of him in the privacy of his office, or even in the precincts of a court. I remember one occasion when the last case on my list one morning was theft of a newspaper; the plea was not guilty; I heard the case, convicted the accused and fined him \$25 or five days and gave him 15 days to pay. Returning to my office, I had to go through a hall where the accused and his lawyer were standing; no one else was in the hall. As I passed them, the accused said to me, "So you call that justice, do you, you stupid bastard?" If there had been a police officer in the hall, I might have told him to take the accused into custody and bring him back into court, returning myself, when I might have had a few things to say to him and perhaps kept him in custody for the rest of the day, but as it was, I pretended I hadn't heard him. Upon reflection, I think I did the right thing; after all, the accused could have called upon me at my office and told me the same thing with impunity.

CHAPTER XXIII

PAROLE

There are two kinds of parole, one authorized by the National Parole Board, and the other, for indefinite sentences only, by the Ontario Parole Board.

The policy of the National Parole Board is, so far as possible, to:

- (a) Encourage inmates to become law-abiding citizens and to assist them to do so by granting parole;
- (b) Treat the offender rather than the offence;
- (c) Deal with the offenders as individuals, not as members of a group;
- (d) Judge each case objectively, according to its merits and circumstances;
- (e) Be flexible and avoid the use of rigid or arbitrary rules of practice;
- (f) Be practical, realistic and businesslike in dealing with offenders;
- (g) Avoid any suggestion that parole means pampering inmates or that it involves the use of leniency or clemency;
- (h) Consider each case from the point-of-view that what the inmate is apt to do in the future is more significant than what he has done in the past;
- (i) Provide adequate supervision to ensure protection of the public and assistance for parolees; and
- (j) Emphasize correction and reformation as the purposes of punishment, rather than vengeance or retribution.

TIME ELIGIBILITY FOR PAROLE

According to Parole Regulations (P.C. 1960-681), an inmate serving a sentence of two years or more in a federal penitentiary shall serve one year before parole can be granted; those serving a sentence of three years and over shall serve one-third of their sentences or four years—whichever is the lesser period—before being eligible.

Regulations also provide that an inmate shall serve ten years of a life sentence (if it is a commuted death sentence) and seven years in the case of an ordinary life sentence, before being considered for parole.

The case of every inmate serving a sentence of two years or more is reviewed automatically six months after admission, when a date is set for reviewing his case in accordance with the Parole Regulations. If parole is not granted when the case is then reviewed, it will be reviewed every two years thereafter, or it may be marked for an earlier review if this seems to be warranted.

Inmates serving a sentence of under two years in a provincial reformatory or county gaol, may be considered for parole after serving one-third of their sentences. However, they must personally apply for parole and The National Parole Board undertakes to complete the investigation and make a decision within four months.

An exception can be made to the Parole Regulations in very special cases but, generally speaking, these are the times which must be served before an inmate becomes eligible for parole.

Parole is strictly selective and is granted to about one-third of the applicants. It does not mean they are paroled automatically but only if parole is deserved.

When granted parole, an inmate is on parole for the unexpired balance of his sentence less any time he has earned up to then. He is deemed to be serving his sentence, but does not earn any more time off for good behaviour while on parole. Under the new *Penitentiary Act* (1962), the time on parole is

the unexpired balance of his sentence, plus any statutory remission time he may have earned, so the time on parole will be longer.

MAGISTRATES' REPORTS

All magistrates are familiar with the blue forms they are expected to complete and mail to The National Parole Board shortly after they have sentenced an offender to six months imprisonment or longer. These should be as complete as possible, and are required to be made as soon as possible after the conviction, so that the facts are fresh in the magistrate's mind. When ticket-of-leave was the concern of the Remission Branch of the Department of Justice, it was the custom of that Branch to send lengthy reports to the convicting magistrate when they were reviewing an application for ticket-of-leave, but this practice had many disadvantages: the conviction was so long before that the magistrate didn't remember the case (he would have been able to refresh his memory, however, if he had kept proper notes of the trial); even if he had kept notes, they were too sketchy to indicate to him or anyone else why he imposed the sentence he did; many files were lost, and so on.

The National Parole Board will review the order of a magistrate who has prohibited anyone from driving an automobile for any length of time, as that is part of the sentence imposed. They may grant a sort of parole in such cases; their practice is, if the facts warrant it, to authorize the same kind of restricted licence dealt with in sec. 22 of *The Highway Traffic Act*. Recommendations by the convicting magistrate are welcome in such cases.

Magistrates wishing more information about Canada's parole system, should write The National Parole Board, Ottawa, for a copy of that excellent brochure, *Canada's Parole System*, by T. George Street, Q.C., the able Chairman of the Board who was, of course, before his appointment, one of Ontario's most distinguished magistrates.

As for the Ontario Board of Parole, they send a form to all convicting magistrates shortly before the definite term of the

sentence expires, asking for a recommendation with respect to the indefinite term, but it would seem that the members of the Board would be better judges than the magistrates as to whether an applicant should be released on parole, as they have reports of various kinds at their disposal, which magistrates have not, and those reports indicate whether or not the prisoner has been rehabilitated sufficiently to warrant his release on parole.

CHAPTER XXIV

LATIN AND FOREIGN WORDS AND PHRASES

Nearly all Latin and foreign words and phrases are susceptible of precise translation into English and generally speaking, English, and simple English at that, should be preferred. It is not readily apparent how any useful purpose is served by the use of the Latin *bona fides* for "good faith", nor *bona fide* for "in good faith".

Nevertheless, many lawyers use Latin and foreign phrases; many Judges use them prodigally in their judgments which we read in the Law Reports; and they abound in legal literature, so it would be just as well for a magistrate to understand a few of the more popular Latin and foreign words, phrases and maxims. He may even be excused using them, or some of them, himself, provided he can assure himself that the accused knows what is going on; if he is in doubt about that, then he should by all means use the English equivalent. Common Latin or foreign words and phrases heard in magistrates' courts are *voir dire*, *in camera*, *obiter* (*dictum*, *dicta*), *ad hoc*, *pro rata*, *quid pro quo*, *prima facie*, *functus officio*, and there are many others. An accused person, provided he is no French scholar, would be baffled by the magistrate and counsel exchanging views on whether or not a *voir dire* should be held, but he would have little difficulty in understanding that a trial within a trial is going to be held to determine, first, if he made a statement to the police; and second, if he did, was it made voluntarily, i.e., (and here a magistrate translates "voluntarily" for the accused's benefit) of his own free will without the use of force or promises. Likewise, *functus officio* is a common phrase used by magistrates and counsel quite freely, but it is doubtful if one accused in a thousand ever heard it before, and even if he did, would have forgotten its meaning long since. It is so much easier to say "deprived of jurisdiction", or, if that needs any translation for the benefit of the accused, it is simple enough to say, "Having finished with the case, I am not allowed by law to re-open it."

Such a simple statement will be abundantly clear to the meanest intelligence, and in this connection, it must be recalled that as a general rule, the accused persons who appear before a magistrate are not mental giants; they are far more likely to have subnormal intelligence levels. The processes of law, even in a magistrate's court, are confusing enough to the ordinary accused person without making matters wholly obfuscatory by the habitual use of Latin and foreign words and phrases.

There follows a list of Latin and foreign words, terms and phrases, and the occasional Latin maxim, that are most commonly heard in our courts and in legal literature.

ab extra, L., from without.

ab initio, L., from the beginning.

ab intra, L., from within.

ab invito, L., unwilling.

ab origine, L., from the origin; from the beginning.

ab ovo, L., from the egg; from the beginning.

absente reo, L., the defendant being absent.

actus non facit reum nisi mens sit rea, L., the act itself does not constitute guilt unless done with a guilty intent.

actus reus, L., guilty act.

addendum (pl. addenda), L., something to be added.

ad extremum, L., at last; finally.

ad finem, L., to the end; at the end.

ad hoc, L., special, arranged for this purpose. When a trial judge sits as a judge of an appeal court, he sits *ad hoc*.

ad hominem, L., (literally, to the man); appealing to one's prejudices, selfish interests and the like; attacking one's opponent rather than dealing with the subject under discussion.

adhuc sub iudice lis est, L., the case has not been decided.

ad idem, L., unanimous.

a die, L., from that day.

ad infinitum, L., to infinity; endlessly.

ad initium, L., at the beginning.

ad interim, L., meanwhile; temporarily.

ad libitum, L., (ad lib.) at pleasure.

ad literam, L., literally; exactly.

ad locum, L., (ad loc.) at or to the place.

ad nauseam, L., (literally) to sickness; to the point of causing disgust.

ad patres, L., (gone) to his fathers; dead.

ad quem, L., at or to which or whom.

ad referendum, L., for further consideration.

ad rem, L., to the purpose; to the point.

à droite, F., on the right.

ad verbum, L., to a word; word for word, verbatim.

advocatus diaboli, L., the devil's advocate.

aequo animo, L., calmly, with equanimity.

à fond, F., to the bottom; thoroughly; fully.

a fortiori, L., with stronger reason; more conclusively; all the more so.

agent provocateur, F., a police agent; a police spy.

à gauche, F., on the left.

à huis clos, F., with closed doors; secretly.

aliunde, from elsewhere.

alter ego, L., my other self; an intimate or bosom friend.

amicus curiae, L., a friend of the court; a disinterested person who gives advice or suggestions in aid of the court.

amour propre, F., self-esteem.

animus furandi, L., the intention to steal.

animus manendi, L., the intention to reside (there).

animus testandi, L., the intention of making a will.

anno ante Christum, L., in the year before Christ.

anno Domini, L., (A.D.) in the year of our Lord.

ante, L., before.

ante diem, L., before the day.

ante meridiem, L., (a.m.) before noon.

a posse ad esse, L., from possibility to reality.

a posteriori, L., from the latter; (reasoning) from effects to causes.

a priori, L., from the former; (reasoning) from cause to effect.

a quo, L., from which.

au courant, F., (literally) with the current; up to date; informed; advised.

audi alteram partem, L., hear the other side.

au fait, F., acquainted with the facts; proficient, expert.

au fond, F., at bottom; fundamentally; in the main.

autrefois acquit, F., previously acquitted (of the same offence).

autrefois convict, F., previously convicted (of the same offence).

bona fide, L., in good faith.

bona fides, L., good faith.

casus omissus, L., omitted case, a gap in the law.

caveat emptor, L., let the buyer beware.

certiorari, L., (literally) to be made more certain; in law a writ from a higher court to a lower one, requesting the record of a case for review.

ceteris paribus, L., other things being equal.

circa, L., around; round about; about.

comme il faut, F., as it should be; proper.

compos mentis, L., of sound mind.

confer, L., (cf.) compare.

consensus facit legem, L., consent makes the law.

contra, L., against; opposing.

contra pacem, L., against the peace.

corpus delicti, L., the body, or substantial and essential facts of a crime.

corrigendum, (pl. corrigenda), L., a thing to be corrected.

coup de maître, F., a master stroke.

cui bono? L., for whose advantage is it? To what end?

culpam poena premit comes, L., punishment follows hard upon crime.

cum grano salis, L., with a grain of salt.

cum laude, L., with praise.

cum privilegio, L., with privilege.

damnant quod non intelligunt, L., they condemn what they do not understand.

de die in diem, L., from day to day.

de facto, L., in fact, though not necessarily in law.

Dei gratia, L., by the grace of God.

de jure, L., of right; by right of lawful title.

de minimis non curat lex, L., the law does not concern itself with trifles.

de mortuis nil nisi bonum, L., of the dead (say) nothing but good.

de novo, L., anew.

Deo volente, L., if God wills.

de profundis, L., out of the depths.

de rigueur, F., obligatory; indispensable; correct.

de trop, F., too much; unwelcome.

Deus ex machina, L., (literally) a god let down by a machine, as in ancient theatres; an unexpected occurrence (which settles some problem); a superhuman agency.

dies non, L., a non-juridical day.

doli incapax, L., incapable of crime.

double entendre, F., a word or phrase with two meanings, especially when one has an indecorous connotation.

double entente, F., a double meaning, ambiguity.

durante minore aetate, L., during the stage of minority.

ein mal, kein mal, Ger., just once doesn't count.

ejusdem generis, L., of the same kind; in law, used especially of things of such a nature that they will be legally construed not to be included by general words of inclusion following an enumerated list of things. The *ejusdem generis* rule is very clearly discussed in *Tillmans & Co. v. S.S. Knutsford, Ltd.*, (1908) 2 K.B. 385; affirmed (1908) A.C. 406.

en avant, F., forward.

en effet, F., in effect; in fact; indeed.

enfin, F., at last; finally; in short.

en passant, F., in passing; by the way.

en rapport, F., in agreement; in harmony.

en règle, F., according to rules; in order.

entre nous, F., between ourselves.

en vérité, F., in truth; verily.

ergo, L., therefore.

erratum (pl. errata), L., error.

esprit de corps, F., group spirit.

esse quam videri, L., to be rather than to seem.

et alibi, L., (et al.) and elsewhere.

et alii (aliae), L., (et al.) and others.

et sequens, et sequentes, et sequentia, L., (et seq.) and the following.

et uxor, L., (et ux.) and wife.

ex animo, L., sincerely; heartily.

ex cathedra, L., from the chair; with authority.

exceptio probat regulam, L., the exception proves the rule.

ex curia, L., out of court.

ex dono, L., by the gift.

exempli gratia, L., (e.g.) for example.

ex gratia, L., of or by favour; in law, implying absence of legal right.

ex hypothesi, L., from the nature of the case, the following from this assumption.

ex mero motu, L., of his own free will.

ex necessitate rei, L., from the necessity of the case.

ex nihilo, nihil fit, L., out of nothing, nothing comes.

ex officio, L., by right of office.

ex parte, L., of one part or side; an *ex parte* application to a court or judge or Master is an application by one side when the other is not, or does not need to be present.

ex post facto, L., (literally) from after the deed. *Ex post facto* law is retroactive law.

ex proprio motu, L., on his own initiative.

facile princeps, L., easily first.

fait accompli, F., a thing already done.

falsus in uno, falsus in omni, L., false in one (thing), false in all.

fama clamosa, L., a current scandal.

faute de mieux, F., for want of better.

faux pas, F., a slip in behaviour.

felo de se, L., (literally, felon of (one's) self); in law, a suicide.

ferae naturae, L., wild (of animals).

festina lente, L., hasten slowly.

fiat justitia ruat coelum, L., let justice be done (though the heavens fall).

filius nullius, L., a son of nobody; a bastard.

flagrante delicto, L., flagrant wrong.

fons et origo, L., the source and origin.

force majeure, F., irresistible compulsion; war, strike, act of God, etc.

functus officio, L., having performed the functions of (his) office; deprived of further jurisdiction in a case at law.

gradu diverso, via una, L., the same road by different steps.

habeas corpus, L., (literally, (that) you have the body); in law, a writ requiring that a prisoner be brought before a court to decide the legality of his imprisonment.

hic et nunc, L., here and now.

hic et ubique, L., here and everywhere.

hoc anno, L., in this year.

hoc mense, L., in this month.

hoc quare, L., look for this.

hoc sensu, L., in this sense.

hoc tempore, L., at this time.

hoc titulo, L., in or under this title.

hoi polloi, Gr., the many; the populace; the common people; the masses. Note that "the" *hoi polloi* is redundant, since *hoi* means "the".

hors de combat, F., out of (the) fight; disabled.

hors de propos, F., not to the point or purpose.

hujus anni, L., this year's.

hujus mensis, L., this month's.

ibidem, L., (ibid.; ib.) in the same place.

idée fixe, F., a fixed idea; an obsession.

idem, L., the same.

idem quod, L., (i.q.) the same as.

id est, L., (i.e.) that is.

ignorantia facti excusat, L., ignorance of the fact excuses.

ignorantia lex (legis) (juris) non (neminem) excusat, L., ignorance of the law does not excuse (excuses no one).

imperium in imperio, L., a state within a state; a government within another.

imprimatur, L., (imp.) sanction; let it be printed.

in absentia, L., in (the) absence (of).

in actu, L., in act or reality.

in aeternum, L., forever.

in articulo mortis, L., at the point of death.

in camera, L., in private; with the press and public excluded.

in capite, L., in chief.

in curia, L., in court.

in esse, L., in being; in actuality.

in extenso, L., at full length.

in extremis, L., in the last extremity; at the point of death.

in favorem libertatis, in the interest of freedom.

in flagrante delicto, L., in flagrant wrong.

in forma pauperis, L., in the form or character of a pauper; as a pauper.

in foro domestico, L., in a domestic (not foreign) court.

infra, L., below.

infra dignitatem, L., (infra dig.) beneath one's dignity; undignified.

in fraudem legis, L., in fraud, or evasion, of the law.

in integrum, L., in entirety.

in limine, L., on the threshold, at the outset.

in loco, L., in place; in the proper place.

in loco citato, L., (in loc. cit.) in the place cited.

in loco parentis, L., in the place of a parent.

in medias res, L., into the midst of things; into full activity.

in pari materia, in an analogous case.

in perpetuum, L., in perpetuity; always.

in personam, L., (literally, against the person); in law, designating an action or judgment against a person, as distinguished from one against property. See *in rem*.

in propria persona, L., in one's own person or character.

in re, L., in the matter of; in regard to; concerning.

in rem, L., (literally, against the thing;) in law, designating an action or judgment against property, as distinguished from one against a person. See *in personam*.

in rixa, L., in dispute.

in sano sensu, L., in the proper sense.

in situ, L., in place; in its original position.

instant, L., day of the current month.

in statu quo, L., in the state in which it was (or is).

inter, L., between.

inter alia, L., amongst others; among other things.

inter se, L., among (or between) themselves; mutually.

inter vivos, L., during life.

in toto, L., in its entirety.

intra, L., within.

in transitu, L., (in trans.) on the way.

intra vires, L., within the jurisdiction of the legislating body.

in vacuo, L., in a vacuum.

in vino veritas, L., in wine there is truth.

invito domino, L., against the will of the owner.

ipse dixit, L., (literally) he himself said it; an unsupported statement.

ipsissima verba, L., the very words.

ipso facto, L., by the act or fact itself; obvious from the facts of the case; automatically.

ipso jure, L., by the law itself; legally.

judex, L., (J.) judge.

j'y suis; j'y reste, F., here I am; here I stay.

lacuna, L., a gap; defect; loss.

laissez faire, F., (literally) let do; let things remain as they are;
non-interference.

lapsus calami, L., a slip of the pen.

lapsus linguae, L., a slip of the tongue.

lapsus memoriae, L., a slip of the memory.

lares et penates, L., household goods; one's treasured possessions.

lex appetit perfectum, L., the law aims at perfection.

lèse majesté, F., high treason.

le tout ensemble, F., the whole; taken together.

lex dubia non obligat, L., a doubtful law does not bind.

lex loci, L., the law of the place.

lex loci rei sitae, L., the law of the place where the thing is
situated.

lex mercatoria, L., mercantile or commercial law.

lex non cogit ad impossibilia, L., the law does not compel one
to do impossibilities.

lex non scripta, L., unwritten law; common law.

lex regit, arma tuentur, L., law rules; arms protect.

lex scripta, L., written law; statute law.

lex semper dabit remedium, L., the law will always give a remedy.

lex succurrit ignoranti, L., the law aids the ignorant.

lex talionis, L., the law of retaliation.

lex terrae, L., the law of the land.

lex uno ore omnes alloquitur, L., the law speaks with one mouth
to all.

loco citato, L., (loc. cit.) in the place quoted; in the cited passage.

loco supra citato, L., in the place above cited.

locum tenens, L., (literally) holding the place; a person taking another's place for the time being; temporary substitute.

locus criminis (delicti), L., the place of the crime (offence).

locus in quo, L., the place in which.

locus sigilli, L., (L.S.) the place of the seal.

locus standi, L., place of standing; the right of a place inc ourt;
the right to appear before and be heard by a tribunal.

loquitur, L., (loq.) he (or she) speaks.

lucri causa, L., for the sake of gain.

magnum bonum, L., a great good.

magnum opus, L., a great work.

mala fide, L., bad faith.

mala prohibita, L., a wrongful act prohibited by law (as opposed to *mala in se*).

malum in se, L., evil in itself.

mansuetae naturae, L., tame (of animals).

manuscripta, L., (MSS.) manuscripts.

manuscriptum, L., (MS.) manuscript.

me judice, L., I being judge; in my opinion.

mens legis, L., the spirit of the law.

mens rea, L., guilty mind.

meo periculo, L., at my own risk.

meo voto, L., according to my wish.

meum et tuum, L., mine and thine.

minutia, L., smallness; minuteness.

modus operandi, L., manner of working; procedure.

modus vivendi, L., manner of living; hence, a temporary agreement in a dispute pending final settlement; compromise.

mores, L., manners.

more suo, L., in his own way.

motu proprio, L., of his own record.

multum in parvo, L., much in little.

mutatis mutandis, L., the necessary changes having been made.

mutato nomine, L., (m.n.) the name being changed.

nemine contradicente, L., (nem. con.) no one contradicting.

nemine dissente, L., (nem. dis.) no one dissenting.

ne plus ultra, L., (literally) no more beyond, the peak of achievement.

nervus probandi, L., the sinews of the argument.

nihil, L., nothing.

nisi, L., unless.

nolens volens, L., willing or unwilling.

nolle prosequi, L., (nol. pros.) unwilling to prosecute; in law formal notice by a prosecutor that the prosecution will be abandoned. This term is not used in Canadian courts.

nolo contendere, L., I do not wish to contest (it); in law, a plea by the defendant in a criminal case declaring that he will not enter a defence, but not admitting guilt. This term is not used in Canadian courts.

non compos mentis, L., not of sound mind.

non obstante, L., (non.obs.) notwithstanding.

non prosequitur, L., (non pros.) he does not prosecute

non sequitur, L., (non. seq.) it does not follow.

noscitur a sociis, L., it is known by its associates.

nota bene, L., (N.B.) note well.

obiit, L., (obit.) he (she) died.

obiter, L., obiter dictum, which see.

obiter dictum, L., (pl. obiter dicta) (literally) said by the way;
in law, in a court's decision, an incidental remark not bearing
on the issue and therefore not binding or authoritative.

omnia praesumuntur rite esse acta, L., all acts are presumed
to have been done rightly.

onus probandi, L., the burden of proof.

opere citato, L., (op. cit.) in the book previously mentioned.

opus, L., work; book; composition.

oui-dire, F., hearsay.

pari passu, L., with equal pace.

partes aequales, L., equal parts.

particeps criminis, L., an accomplice in a crime.

partim, L., in part.

passim, L., everywhere; throughout.

per annum, L., by the year.

per capita, L., (literally) by heads; for each person.

per contra, L., on the contrary.

per curiam, L., by the court.

per diem, L., by the day.

per incuriam, L., through want of care, a dictum clearly the
result of oversight.

per mensem, L., by the month.

per pro, L., on behalf of.

per se, L., by itself, of itself; considering nothing but itself.

persona grata, L., an acceptable person.

persona non grata, L., an unacceptable person.

pis aller, F., last resort or expedient.

plebs, L., the common people.

poco a poco, It., little by little.

post, L., after.

post hoc, ergo propter hoc, L., after this; therefore, because of this; in logic, the fallacy of thinking that a happening which follows another must be its result.

post meridiem, L., (p.m.) after noon.

post mortem, L., after death; an autopsy.

prima facie, L., at first sight; on the face of it.

pro bono publico, L., for the public good.

procès-verbal, F., a transcript of evidence, particularly in a criminal case.

pro et (*and*) con, L., for and against.

profanum vulgis, L., the rabble; the unhallowed multitude.

pro forma, L., for the sake of form; sometimes, a printed form to be filled in.

propria manu, L., by his own hand.

pro rata, L., in proportion; according to the share of each.

pro tanto, L., for so much; for as far as it goes.

pro tempore, L., (pro tem.) for the time being.

proximo, L., day of the next succeeding month.

punctatim, L., point for point.

qua, L., as; in the capacity of his, her or its character only.

quantum, L., quantity or amount.

quantum libet, L., as much as you please.

quantum placet, L., as much as seems good.

quantum sufficit, L., sufficient quantity.

quantum vis. L., as much as you will.

quare, L., questioned.

quasi, L., as if; in a sense or manner; seemingly.

quasi dicat, L., as if one should say.

quasi dictum, L., as if said.

quasi dixisset, L., as if he had said.

quid pro quo, L., something given or done in exchange for something given or done.

qui facit per alium, facit per se, L., he who does (a thing) through another, does (it) through himself; used to express the law that a person is responsible for the acts of his agents.

qui s'excuse, s'accuse, F., whosoever excuses himself accuses himself.

qui tacet consentit, L., he who is silent gives consent.

qui tam, (pro domino rege quam pro se ipso sequitur), L., who as well (for the lord the king as for himself sues); in law, an action brought on a penal statute both on the litigant's behalf and that of the Crown.

qui vive, F., (literally) who lives? On the *qui vive*, alert.

quoad hoc., to this extent.

quo animo, L., with what intent?

quod erat demonstrandum, L., which was to be proved.

quod erat faciendum, L., which was to be done.

quod erat inveniendum, L., which was to be found out.

quod est, L., (q.e.) which is.

quod libet, L., (literally, what it pleases); a subtle point; a question for scholastic debate.

quod vide, L., (q.v.) which see.

quo jure, L., by what right?

quo modo, L., in the manner that; in what manner?

quot homines, tot sententiae, L., (literally, how many men, so many opinions); as many opinions as there are men.

raison d'être, F., reason for being.

ratio decidendi, L., the reason or ground for a judicial decision.

rara avis, L., (literally) a rare bird; an unusual person or thing.

re, L., in the matter of; regarding.

reductio ad absurdum, L., reducing (a proposition) to the absurd; demonstrating by analogy that a proposition is ridiculous.

res gestae, L., the facts surrounding or accompanying a transaction which is the subject of a legal proceeding.

res ipsa loquitur, L., the thing speaks for itself.

res judicata, L., in law, an issue already decided by judicial authority.

respice finem, L., look to the end.

respondeat superior, L., let the principal be held responsible.

re vera, L., in truth.

rex numquam moritur, L., the king never dies.

savoir faire, F., sophistication; correct deportment; tactfulness.

savoir vivre, F., knowing how to live; the knowledge of gracious living.

scienter, L., knowledge.

scilicet, L., (ss.) namely (in law).

secundum, L., according to.

secundum legem, L., according to law.

secundum naturam, L., according to nature, naturally.

secundum regulam, L., according to rule.

seriatim, L., one after another in order; point by point.

sic, L., so.

sic passim, L., so everywhere.

sic transit gloria mundi, L., so passes (away) worldly glory.

sicut ante, L., as before.

sine anno, L., without date.

sine cura, L., without care.

sine die, L., (literally) without a day; without appointing a day
for continuation (of a case at law).

sine legitima prole, L., without lawful issue.

sine loco, anno vel nomine, L., without place, year (date) or name.

sine mora, L., without delay.

sine nomine, L., without name.

sine qua non, L., (literally) without which not; an indispensable
condition.

sine prole, L., without issue.

soi-disant, F., self-styled; would-be.

soupgon, F., a tiny bit; a trace.

stare decisis, L., to abide by things decided; a doctrine in law
whereby inferior courts are bound by the decisions of superior
courts which have power to review their decisions.

stare decisis et non quita movere, L., to abide by things decided
and not to disturb settled points.

statim, L., (stat.) immediately.

status quo, L., the state in which it was (or is).

stet, L., let it stand; do not delete.

sub judice, L., under adjudication.

sub poena, L., under a penalty.

sub rosa, L., (literally) under the rose; secretly.

sub voce, L., (s.v.) under the (specified) word (as in a dictionary).

sui juris, L., (literally, in his (or her) own right); in law, legally competent to manage one's own affairs because of legal age and sound mind.

sui generis, L., of its own kind, unique.

summa cum laude, L., with highest praise.

summum bonum, L., the highest good.

suppressio veri, suggestio falsi, L., suppression of the true (is) suggestion of the false.

supra, L., above.

talis qualis, L., just as they come.

tant mieux, F., so much the better.

tant pis, F., so much the worse.

tertium quid, L., (literally) a third something; something intermediate; in argument, a common meeting-ground.

tour de force, F., a feat of strength; a skilful accomplishment.

tout à fait, F., entirely; wholly.

transit in rem judicatum, L., (literally) it becomes a thing which has been adjudged.

tu quoque, L., thou also; a retort accusing an accuser of the same thing.

ubi jus ibi remedium, L., there is no wrong without a remedy.

ubique, L., everywhere.

ubi supra, L., (u.s.) in the place above mentioned.

ultimo, L., day of the last previous month.

ultra licitum, L., beyond what is allowable.

ultra vires, L., beyond the jurisdiction of the legislating body.

ut dictum, L., as directed.

ut infra, L., as below.

ut supra, L., as above.

vade mecum, L., something carried about with one for ready reference or constant use; specifically, a manual or handbook.

variae lectiones, L., various readings.

variorum notae, L., the notes of various commentators.

vede et crede, L., see and believe.

verbatim, L., word for word; in exactly the same words.

verbatim et literatim, L., word for word and letter for letter.

verbi gratia, L., (v.g.) for example.

verbum sat sapienti, L., (verb. sap.) a word to the wise is sufficient.

veritas est justitiae mater, L., truth is the mother of justice.

vexata quaestio, L., a disputed question.

via media, L., a middle way; a happy mean.

via trita, via tuta, L., the beaten path is the safe path.

vice versa, L., the terms of the case being reversed.

vi et armis, L., by force of arms; by main force, by violence

vide, L., see.

videlicet, L., (viz.) namely.

vide ut supra, L., see what is stated above.

viva voce, L., orally.

voir dire, F., the trial of a collateral issue during a case at law;
a trial within a trial.

volenti non fit injuria, L., no injury is done to one who consents.

volo, non valeo, L., I am willing but unable.

volte-face, F., a change of front.

CHAPTER XXV

SOME CELEBRATED QUOTATIONS FOR MAGISTRATES TO PONDER ON

EXODUS, xviii : 20, 21

Moreover thou shalt provide out of all the people able men, such as fear God, men of truth, hating covetousness; and place such over them to be rulers of thousands, rulers of hundreds, rulers of fifties, and rulers of tens: And let them judge the people at all seasons. . . .

LEVITICUS, xix : 15

Ye shall do no unrighteousness in judgment; thou shalt not respect the person of the poor nor honour the person of the mighty; but in righteousness shalt thou judge thy neighbour.

DEUTERONOMY, i : 16, 17

And I charged your judges at that time, saying, Hear the causes between your brethren and judge righteously between every man and his brother, and the stranger that is with him.

Ye shall not respect persons in judgment; but ye shall hear the small as well as the great; ye shall not be afraid of the face of man; for the judgment is God's: and the cause that is too hard for you, bring it unto me, and I will hear it.

DEUTERONOMY, xvi : 19

Thou shalt not wrest judgment; thou shalt not respect persons, neither take a gift; for a gift doth blind the eyes of the wise, and pervert the words of the righteous.

II SAMUEL, xv : 4

Absalom said moreover, Oh that I were made judge in the land, that every man which hath any suit or cause might come unto me, and I would do him justice!

PSALMS, lxxxii : 3

Defend the poor and fatherless: do justice to the afflicted and needy.

PROVERBS, xxi : 3

To do justice and judgment is more acceptable to the Lord than sacrifice.

PROVERBS, xxxi : 9

Open thy mouth, judge righteously, and plead the cause of the poor and needy.

ISAIAH, lix : 9

Therefore is judgment far from us, neither doth justice overtake us: we wait for light, but behold obscurity; for brightness, but we walk in darkness.

MICHAH, vi : 8

He hath shewed thee, O man, what is good; and what doth the Lord require of thee, but to do justly, and to love mercy, and to walk humbly with thy God?

ST. JOHN, vii : 24

Judge not according to the appearance, but judge righteous judgment.

II CORINTHIANS, iii : 9

For if the ministration of condemnation be glory, much more doth the ministration of justice abound in glory.

I TIMOTHY, i : 8

We know that the law is good, if a man use it lawfully.

ADDISON:

Justice discards party, friendship, and kindred, and is therefore represented as blind.

ADDISON:

To be perfectly just is an attribute of the divine nature; to be so to the utmost of our abilities is the glory of man.

ÆSCHYLUS:

Justice shines in smoky cottages, and honours the pious. Leaving with averted eyes the gorgeous glare obtained by polluted hands, she is wont to draw nigh to holiness, not reverencing wealth when falsely stamped with praise, and assigning to each deed its righteous doom.

ARISTOTLE:

Justice is to give to every man his own.

BACON:

A popular Judge is a deformed thing; and *plaudites* are fitter for players than magistrates. Speech, Star Chamber, 1617, to Judges before the summer circuit.

BACON:

Judges must be chaste as Caesar's wife, neither to be, nor so much as suspected in the least to be unjust.

Letter 1616, to Villiers, Duke of Buckingham (when he became a Favorite to King James).

BACON:

Judges ought to be more learned than witty; more reverend than plausible, and more advised than confident. Above all things, integrity is their portion and proper virtue.

Essays: Of Judicature.

BACON:

The twelve Judges of the realm are as the twelve lions under Solomon's throne: they must be lions, but yet lions under the throne.

Speech, 1617. On the occasion of Mr. Justice Hutton being sworn in as Judge of the Common Pleas.

BACON:

Judges ought to remember that their office is *jus dicere*, and not *jus dare*; to interpret law, and not to make law, or give law.

Essays: Of Judicature.

BACON:

Patience and gravity of hearing is an essential part of justice; and an over-speaking Judge is no well-tuned cymbal. It is no grace to a Judge first to find that which he might have heard in due time from the Bar, or to show quickness of conceit in cutting off evidence or counsel too short; or to prevent information by questions though pertinent . . . The place of justice is a hallowed place; and therefore not only the Bench, but the foot pace and precincts and purpose thereof ought to be preserved without scandal and corruption. . . .

Essays: Of Judicature.

BLACKSTONE:

(The Judge is) not delegated to pronounce a new law, but to maintain and expound the old one.

Commentaries, Bk. 1, 69.

BLACKSTONE:

They (the Judges) are the depositories of the laws; the living oracles, who must decide in all cases of doubt, and who are bound by an oath to decide according to the law of the land.

Commentaries, Bk. 1, 69.

BLAIR:

He who goes no further than bare justice, stops at the beginning of virtue.

JUSTICE CURTIS BOK:

A good Judge must have an enormous concern with life, animate and inanimate, and a sense of its tempestuous and

untamed streaming. Without such fire in his belly, as Holmes also called it, he will turn into a stuffed shirt the instant a robe is put around him. The first signs of judicial taxidermy are impatience with trivial matters, and the statement that his time is being wasted, for the secret of a Judge's work is that 99% of it is with trivial matters, and that none of them will shake the cosmos very much. But they are apt to shake the litigants gravely. It is only his power over the people that makes them treat him as a demi-god, for government touches them more perceptibly in the court-room than at any other point in their lives. The cosmos is made up of little quivers, and it is important that they be set in reasonable unison. *Show me an impatient Judge and I will call him a public nuisance to his face.* Let him be quick, if he must be, but not unconcerned, ever. Worse than judicial error is it to mishandle impatiently the small affairs of momentarily helpless people, and Judges should be impeached for it.

"*I, Too, Nicodemus.*" Alfred A. Knopf, Inc., New York, 1946, p. 4.

JUSTICE BERNARD BOTEIN:

There is a modern version of Lord Chancellor Lyndhurst's definition of a good Judge: "First, he must be honest. Second, he must possess a reasonable amount of industry. Third, he must have courage. Fourth, he must be a gentleman. And then, if he has some knowledge of law, it will help."

Trial Judge. Simon and Schuster, New York, 1952.

LORD BOWEN:

A jurist is a person who knows a little about the laws of every country except his own.

Cunningham, Biographical Sketch 184.

LORD BOWEN:

Conscious as we are of one another's many imperfections.
(On the opening of the Royal Courts in 1882 the Judges were preparing an address to Queen Victoria. It began: "Conscious as we are of our manifold defects." Jessel objected and Bowen suggested the above alternative.)

LORD BOWEN:

There is no human being whose smile or frown; there is no Government, Tory or Liberal, whose favour or disfavour can start the pulse of an English Judge upon the Bench, or move by one hair's breadth the even equipoise of the scales of justice.

At Mansion House Banquet, May 18, 1887.

BRACTON:

Laws and customs . . . are often abusively perverted by the foolish and unlearned who ascend the judgment seat before they have learnt the laws.

De Legibus et Consuetudinibus Angliae, f. 1 (v. 1, p. 5 Twiss ed. Rolls ser. No. 70).

JOHN BUCHAN:

A great Judge must also be a great man.

BURKE:

Justice is itself the great standing policy of civil society; and any departure from it, under any circumstances, lies under the suspicion of being no policy at all.

BURKE:

Whenever a separation is made between liberty and justice, neither, in my opinion, is safe.

BYRON:

He who is only just is cruel. Who on earth could live were all judged justly?

PIERO CALAMANDREI:

The good Judge takes equal pains with every case no matter how humble; he knows that important cases and unimportant cases do not exist, for injustice is not one of those poisons which, though harmful when taken in large doses, yet when taken in small doses may produce a salutary effect.

Injustice is a dangerous poison even in doses of homeopathic proportions.

Eulogy of Judges.

PIERO CALAMANDREI:

Contrary to the layman's belief, personal friendship between the Judge and lawyer is not an advantage to the client: for a scrupulous Judge is so afraid that he will unconsciously favour his friend that in reaction he tends to be unjust to him.

Eulogy of Judges.

PIERO CALAMANDREI:

I know of a chemist who occasionally distills poisons in his laboratory. Then he awakens with a start in the night remembering with terror that a milligram of that substance would suffice to kill a man. How then can a Judge sleep tranquilly when he knows that he has in a secret chest that subtle poison which is called injustice, one drop of which escaping through mischance may not only take his life, but, more terrible still, may give life a bitter destructive flavour which no kindness can ever remove?

Eulogy of Judges.

CHIEF JUSTICE LORD CAMPBELL:

It is of great consequence that the public should know what takes place in Court; and the proceedings are under the control of the Judges. The inconvenience therefore arising from the chance of injury to private character is infinitesimally small as compared to the convenience of publicity.

In *Davison v. Duncan* 7 E. & B. 229, 231.

JUSTICE BENJAMIN N. CARDOZO:

The great tides and currents which engulf the rest of men, do not turn aside in their course, and pass the Judges by.

Nature of the Judicial Process 168 (1921).

JUSTICE BENJAMIN N. CARDOZO:

The work of a Judge is in one sense enduring and in another sense ephemeral. What is good in it endures. What is erroneous is pretty sure to perish. The good remains the foundation on which new structures will be built. The bad will be rejected and cast off in the laboratory of the years.

But justice, though due to the accused, is due to the accuser also. The concept of fairness must not be strained till it is narrowed to a filament. We are to keep the balance true.

In *Snyder v. Massachusetts*, 291 U.S. 97, 122, 73 1. ed. 674, 54 S. Ct. 330.

RUFUS CHOATE:

He (a Judge) shall know nothing about the parties, everything about the case. He shall do everything for justice; nothing for himself; nothing for his friend; nothing for his patron; nothing for his sovereign. If, on one side, is the executive power, and the legislature and the people—the sources of his honours, the givers of his daily bread—and on the other an individual nameless and odious, his eye is to see neither, great nor small; attending only to the “trepidations of the balance”.

At the Massachusetts Constitutional Convention, 1853: *Debates and Proceedings* 800.

RUFUS CHOATE:

In the first place, he (the Judge) should be profoundly learned in all the learning of the law, and he must know how to use that learning.

In the next place, he must be a man, not merely upright, not merely honest and well-intentioned—this, of course—but a man who will not respect persons in judgment.

And finally, he must possess the perfect confidence of the community, that he bear not the sword in vain. To be honest, to be no respecter of persons, is not yet enough. He must be believed to be such. . . . I claim that he be a man towards whom the love and trust and affectionate admiration of the people should flow; not a man perching for a winter and summer in our court-houses, and then gone forever, but one to whose benevolent face, and bland and dignified manners, and firm administration of the whole learning of the law, we become accustomed, whom our eyes anxiously, not in vain, explore when we enter the temple of justice; towards whom our attachment and trust grow even with the growth of his own eminent reputation. . . .

CHATEAUBRIAND:

Justice is the bread of the nation; it is always hungry for it.

CICERO:

It may truly be said that the magistrate is the speaking law, and the law a silent magistrate. (*Vere dici potest, magistratum legem esse loquentem, legem autem mutum magistratum.*)

De Legibus, III, i.

CICERO:

Justice consists in doing no injury to men; decency in giving them no offence.

CLARKE, M.R.:

There are two things against which a Judge ought to guard—precipitancy, and procrastination. Sir Nicholas Bacon was made to say, which I hope never again to hear, that a speedy injustice is as good as justice which is slow.

In *Atherton v. Worth* (1764) 1 Dick. 375, 377.

CHIEF JUSTICE COCKBURN:

In a criminal proceeding, the question is not alone whether substantial justice has been done, but whether justice has been done according to law.

In *Martin v. Mackonochie* (1873) 3 Q.B.D. 730 and 775.

CHIEF JUSTICE COCKBURN:

(A Judge) cannot set himself above law which he has to administer, or make or mould it to suit the exigencies of a particular occasion.

In *Martin v. Mackonochie* (1878) 3 Q.B.D., 730, 775.

COKE:

The law is the rule, but it is mute. The kind judgeth by his Judges, and they are the speaking law.

First Institute, 130. (Generally quoted: "The Judges are the speaking law.")

COKE:

Justice ought to be free, because nothing is more iniquitous than venal justice; full, because justice ought not to halt; and speedy because delay is a kind of denial.

2 *Coke, Institutes*, 55.

CHIEF JUSTICE COLERIDGE:

We must not be guilty of taking the law into our own hands, and converting it from what it really is to what we think it ought to be.

In *R. v. Ramsey* (1883) 1 C. & E. 126, 136.

CORNEILLE:

Justice advances with such languid steps that crime often escapes from its slowness. Its tardy and doubtful course causes many tears to be shed.

CUMBERLAND:

All are not just because they do no wrong; but he who will not wrong me when he may: he is truly just.

LORD DARLING:

Anyone who will may satisfy himself, by taking down a volume of reports, old or new, that any given Judge will run in a particular direction if he fairly can.

Scintillae Juris: Of Judges.

FINLEY PETER DUNNE:

"If I had me a job to pick out," said Mr. Dooley, "I'd be a Judge. I've looked over all th' others and that's the on'y wan that suits. I have th' judicyal timperamint. I hate wurruk."

Finley Peter Dunne, *Observations by Mr. Dooley: The Law's Delays.*

DENHAM:

Justice, when equal scales she holds, is blind; nor cruelty, nor mercy, change her mind; when some escape for that which others die, mercy to these is cruelty.

DIDEROT:

Justice is the first virtue of those who command, and stops the complaints of those who obey.

DWIGHT D. EISENHOWER:

Though force can protect in emergency, only justice, fairness, consideration and co-operation can finally lead men to the dawn of eternal peace.

HENRY FIELDING:

I am as sober as a Judge.

Don Quixote in England, III, 14.

SIR JOHN FORTESCUE:

I would yeu should know that the Justices of England sit not in the King's courts above iij houres in a day, that is to say, from viij of the clock in the forenoone til xi, complete. In the afternoones those courts are not holden or kept.

But the suters then resort to the perusing of their writings and elsewhere consulting with the Serjeants at law and other their counsaylors. Wherefore the Justices, after they have taken their refection, doe passe and bestow all the residue of the day in the study of the lawes, in reading of holy scripture and using other kind of contemplation at their pleasure. So that their life may seem more contemplative than active. And thus doe they lead a quiet life, discharged of all worldly cares and troubles.

De Laudibus Legum Angliae, ch. 51.

FRANKLIN:

Justice is as strictly due between neighbour nations, as between neighbour citizens. A highwayman is as much a robber when he plunders in a gang, as when single; and a nation that makes an unjust war is only a great gang of robbers.

FROUDE:

Justice without wisdom is impossible.

THOMAS FULLER:

His (the good Judge's) private affections are swallowed up in the common cause as rivers lose their names in the ocean.

The Holy State: The Good Judge (1642).

WILLIAM S. GILBERT:

And that Nisi Prius Nuisance, who just now is rather rife,

The Judicial Humorist—I've got him on the list!

All funny fellows, comic men, and clowns of private life—

They'd none of 'em be missed—they'd none of 'em be missed.

The Mikado, I.

WILLIAM E. GLADSTONE:

Justice delayed is justice denied.

GOETHE:

One man's word is no man's word; we should quietly hear both sides.

GOLDSMITH:

To embarrass justice by a multiplicity of laws, or hazard it by a confidence in our judges, are, I grant, the opposite rocks on which legislative wisdom has ever split; in one case the client resembles that emperor who is said to have been suffocated with the bedclothes, which were only designed to keep him warm; in the other, that town which let the enemy take possession of its walls, in order to show the world how little they depended upon aught but courage for safety.

SIR MATTHEW HALE:

LORD HALE'S RULES FOR HIS JUDICIAL
GUIDANCE

Things necessary to be continually had in Remembrance

1. That in the administration of justice I am entrusted for God, the king and the country; and therefore,
2. That it be done, 1st, uprightly; 2dly, deliberately; 3rdly, resolutely.
3. That I rest not upon my own understanding or strength, but implore and rest upon the direction and strength of God.
4. That in the execution of justice I carefully lay aside my own passions, and do not give way to them, however provoked.
5. That I be wholly intent upon the business I am about, remitting all other cares and thoughts as unseasonable, and interruptions.
6. That I suffer not myself to be prepossessed with any judgment at all, till the whole business and both parties are heard.

7. That I never engage myself in the beginning of a cause, but reserve myself unprejudiced till the whole be heard.
8. That in business capital, though my nature prompts me to pity, yet to consider that there is also pity due to the country.
9. That I be not too rigid in matters purely conscientious, where all the harm is diversity of judgment.
10. That I be not biased with compassion to the poor or favour the rich, in point of justice.
11. That popular or court applause, or distaste, have no influence upon any thing I do in point of distribution of justice.
12. Not be solicitous what men will say or think, so long as I keep myself exactly according to the rules of justice.
13. If in criminals it be measuring cast, to incline to mercy and acquittal.
14. In criminals, that consist merely in words when no more harm ensues, moderation is no injustice.
15. In criminals of blood, if the fact be evident, severity is justice.
16. To abhor all private solicitations, of what kind soever, and by whomsoever, in matters depending.
17. To charge my servants; 1st, not to interpose in any business whatsoever; 2nd, not to take more than their known fees; 3rd, not to give any undue precedence to causes; 4th, not to recommend counsel.
18. To be short and sparing at meals, that I may be fitter for business.

The History of the Pleas of the Crown, edition of 1736. Lord Hale (1609-1676) was appointed Judge of the Court of Common Pleas in 1653, Chief Baron of the Exchequer in 1660, and Lord Chief Justice of the King's Bench in 1671.

HERBERT:

God's mill grinds slow but sure.

HERBERT:

A good Judge conceives quickly, judges slowly.

Jacula Prudentum, (1651).

HIEROCLES:

We ought to deal justly, not only with those who are just to us, but likewise to those who endeavour to injure us; and this, for fear lest by rendering them evil for evil, we should fall into the same vice.

OLIVER WENDELL HOLMES:

Judges are apt to be naif, simple-minded men, and they need something of Mephistopheles.

Law and the Court, in *Speeches* 102 (1913).

HUME:

Mankind are always found prodigal both of blood and treasure in the maintenance of public justice.

THOMAS JEFFERSON:

Equal and exact justice to all men, of whatever state or persuasion, religious or political.

From his first inaugural address on March 4, 1801, referring to such justice as being one of the principles which "guided our steps through an age of revolution and reformation."

JUSTINIAN:

Impartiality is the life of justice, as justice is of all good government. Justice is the constant desire and effort to render to every man his due.

JUSTINIAN:

Justice is the constant and perpetual disposition to render every man his due.

JOUBERT:

Justice without strength, or strength without justice—
fearful misfortunes!

KING GEORGE III, (said of):

He has obstructed the Administration of Justice, by refusing
his Assent to Laws for establishing Judiciary Powers.

He has made Judges dependent on his Will alone, for the
tenure of their offices, and the amount and payment of their
salaries.

For depriving us in many cases, of the benefits of Trial by
Jury.

For transporting us beyond Seas to be tried for pretended
offenses.

Some of the actions of King George III of Great Britain
pertaining to the administration of justice and constituting
the causes impelling the colonies to the separation, as
declared in the Declaration of Independence by the "thirteen
united States of America." July 4, 1776.

B. LIVINGSTONE:

If Judges would make their decisions just, they should
behold neither plaintiff, defendant, nor pleader, but only
the cause itself.

LONGFELLOW:

Man is unjust, but God is just; and finally justice triumphs.

LORD CHANCELLOR LYNDHURST:

I look out for a gentleman, and if he knows a little law so
much the better.

Explaining how he appointed Judges.

LORD CHANCELLOR LYNDHURST:

It is the duty of a Judge to make it disagreeable to counsel to talk nonsense.

Campbell, *Lives of Lord Chancellors*: Lyndhurst, Chap. 5.

MAGNA CHARTA:

No freeman shall be taken or imprisoned, or disseised, or outlawed, or banished, or any ways destroyed, nor will we pass upon him, nor will we send upon him, unless by the lawful judgment of his peers, or by the law of the land. To none will we sell, to none will we deny, or delay, right or justice.

LORD MANSFIELD:

I will not do that which my conscience tells me is wrong, upon this occasion, to gain the huzzas of thousands, or the daily praise of all the papers which come from the press; I will not avoid doing what I think is right; though it should draw on me the whole artillery of libels; all that falsehood and malice can invent, or the credulity of a deluded populace can swallow. Once for all let it be understood, "that no endeavours of this kind will influence any man who at present sits here."

In *J.R. v. Wilkes* (1770), 4 Burr. 2527, 2562-63, 98 English Reports 327, 347.

CHIEF JUSTICE MARSHALL:

Justice is the end of government. It is the end of civil society. It ever has been and ever will be pursued until it be obtained or until liberty be lost in the pursuit.

In *U.S. v. Nourse*, (34 U.S.) 8, 27.

SIR THOMAS MORE:

If the parties will at my hand call for justice, then were it my father stood on the one side, and the devil on the other, his cause being good, the devil should have right.

Roper, *Life of More*.

SIR JOHN A. MACDONALD:

What I demand of the Judges I appoint is that they be possessed of common sense and exercise patience and courtesy; if they know any law, so much the better.

LORD MACMILLAN:

The judicial mind is subject to the laws of psychology like any other mind. When the Judge assumes the ermine he does not divest himself of humanity . . . the impartiality which is the noble hallmark of our Bench does not imply that the Judge's mind has become a mere machine to turn out decrees.

LORD MACMILLAN:

The judicial oath of office imposes on the Judge a lofty duty of impartiality. But impartiality is not easy for attainment. For a Judge does not shed the attributes of common humanity when he assumes the ermine. The ordinary human mind is a mass of prepossessions inherited and acquired, often none the less dangerous because unrecognized by their possessor. Few minds are as neutral as a sheet of plate glass, and indeed a mind of that quality may actually fail in judicial efficiency, for the warmer tints of imagination and sympathy are needed to temper the cold light of reason if human justice is to be done. If law were an exact science, and judgment were to be laid to the line and righteousness to the plummet, then justice might be a mechanical product but amidst the incalculable complexities of human relationship the administration of justice can never be of this character. To quote the ancient and impressive formula, the Judge in pronouncing his decision must be rightly advised, and have God and a good conscience before him. . . . He must purge his mind not only of partiality to persons, but of partiality to arguments, a much more subtle matter, for every legal mind is apt to have an innate susceptibility to particular classes of arguments.

Law and Other Things, (1939) 217, 218.

REINHOLD NIEBUHR:

There are no living communities which do not have some notions of justice, beyond their historic laws, by which they seek to gauge the justice of their legislative enactments.

JUDGE JOHN J. PARKER:

Nothing is more important in the maintenance of morals and the proper functioning of civilian life than the prompt and efficient administration of justice . . . If democracy is to survive . . . in the contest with foreign ideologies and systems it must be able to demonstrate its efficiency; nowhere is this efficiency more important than in the fundamental matter of administering justice.

THEODORE PARKER:

Justice is the idea of God; the ideal of men; the rule of conduct writ in the nature of mankind.

PASCAL:

Justice and power must be brought together, so that whatever is just may be powerful, and whatever is powerful may be just.

PENN:

Justice is the insurance we have on our lives and property, and obedience is the premium we pay for it.

WENDELL PHILLIPS:

God gives manhood but one clue to success, utter and exact justice; that, he guarantees, shall be always expediency.

FLOWDEN:

The King (Henry IV) demanded of Gascoign, Justice, if he saw one in his presence kill J.S., and another that was innocent was indicted for it before him and found guilty of the same death, what he would do in such a case? And he answered, that he would respite judgment, because he knew the party was innocent, and make further relation

to his Majesty to grant his pardon; and the King was well pleased that the law was so; but there he could not acquit him, and give judgment of his own private knowledge.

PLATO:

Justice is the supreme virtue which harmonizes all other virtues.

PLATO:

The Judge should not be young; he should have learned to know evil, not from his own soul, but from late and long observance of the nature of evil in others; knowledge should be his guide, not personal experience.

Republic, Bk. 3 (Jowett translation).

POLLOCK:

Judges are philologists of the highest order.

In *Ex parte Davis* (1857) 5 W.R. 522, 523.

POPE:

At present we can only reason of the divine justice from what we know of justice in man. When we are in other scenes we may have truer and nobler ideas of it; but while in this life we can only speak from the volume that is laid open before us.

QUARLES:

If thou desire rest unto thy soul, be just. He that doth no injury, fears not to suffer injury; the unjust mind is always in labour; it either practices the evil it hath projected or projects to avoid the evil it hath deserved.

QUINTILIAN:

It sometimes happens, also, that he who sits as Judge is either our enemy or the friend of our opponent, a circumstance which ought to claim the attention of both sides, but more particularly, perhaps of that to which the Judge seems to incline. For there is sometimes, in unprincipled

Judges, a foolish propensity to give sentence against their friends, or in favour of parties with whom they are at enmity, and to act unjustly that they may not seem to be unjust.

Inst. of Oratory, Bk. 4, 1, 18 (Watson translation).

ROUSSEAU:

An honest man nearly always thinks justly.

CHIEF JUSTICE SCROGGS:

As anger does not become a Judge, so neither doth pity; for one is the mark of a foolish woman, as the other is of a passionate man.

In *R. v. Johnson* (1678) 2 Show., K.B. 1, 4.

SHAKESPEARE:

Be just, and fear not; let all the ends thou aim'st at be thy country's, thy God's and truth's.

King Henry VIII, III, 2.

SHAKESPEARE:

O it is excellent
To have a giant's strength;
But it is tyrannous
To use it like a giant.

Measure for Measure, II, 2.

SHAKESPEARE:

Use every man after his desert, and who should 'scape whipping?

Hamlet, II, 2.

SIR PHILIP SIDNEY:

The just, though they hate evil, yet give men a patient hearing; hoping that they will show proofs that they are not evil.

SIEYÈS:

How can a people be free that has not learned to be just?

SIMMS:

Justice is the great and simple principle which is the secret of success in all government, as essential to the training of an infant as to the control of a mighty nation.

SYDNEY SMITH:

The only way to make the mass of mankind see the beauty of justice, is by showing them, in pretty plain terms, the consequences of injustice.

SYDNEY SMITH:

These, then, are the faults which expose a man to the danger of smiting contrary to the law; a Judge must be clear from the spirit of party, independent of all favour, well inclined to the popular institutions of his country; firm in applying the rule, merciful in making the exception; patient, guarded in his speech, gentle and courteous to all. Add his learning, his labour, his experience, his probity, his practised and acute faculties, and this man is the light of the world, who adorns human life and gives security to that life which he adorns.

Assize Sermon, March 28, 1824, at York.

SOCRATES:

Four things belong to a Judge; to hear courteously; to answer wisely; to consider soberly; and to decide impartially.

It is classic definition of the qualities of a Judge.

SOCRATES:

What is in conformity with justice should also be in conformity to the laws.

SWEETMAN:

Justice, like lightning, ever should appear to a few men's ruin, but to all men's fear.

SWEETMAN:

Of mortal justice if thou scorn the rod, believe and tremble,
thou art judged of God.

SIR THOMAS TALFOURD:

Fill the seats of justice
With good men, not so absolute in goodness,
As to forget what human frailty is.

Ion, V, 3.

JEREMY TAYLOR:

No obligation to justice does force a man to be cruel, or to use the sharpest sentence. A just man does justice to every man and to everything; and then, if he be also wise, he knows there is a debt of mercy and compassion due to the infirmities of man's nature; and that is to be paid; and he that is cruel and ungentle to a sinning person, and does the worst to him, is in his debt and is unjust.

THEMISTOCLES:

Strike if you will, but hear me.

TOUILLIER:

Justice, in the most extensive sense of the word, differs little from virtue; for it includes within itself the whole circle of virtue. Yet the common distinction between them is, that that which considered positively and in itself is called virtue, when considered relatively and with respect to others, has the name of justice. But justice, being in itself a part of virtue, is confined to things simply good or evil, and consists in a man taking such a proportion of them as he ought.

Droit Civil Fr., prel. note 7.

UNKNOWN:

It is not only important that justice be done; it must appear to *have* been done.

VOLTAIRE:

The sentiment of justice is so natural, and so universally acquired by all mankind, that it seems to be independent of all law, all party, all religion.

DANIEL WEBSTER:

Justice is the great interest of man on earth. It is the ligament which holds civilized beings and civilized nations together. Wherever her temple stands, and so long as it is duly honoured, there is a foundation for social security, general happiness, and the improvement and progress of our race. And whoever labours on this edifice with usefulness and distinction, whoever clears its foundations, strengthens its pillars, adorns its entablatures, or contributes to raise its august dome still higher in the skies, connects himself, in name, and fame, and character, with that which is and must be as durable as the frame of human society.

CHIEF JUSTICE JOHN B. WINSLOW:

Equal and exact justice has been the passionate demand of the human soul since man has wronged his fellow man; it has been the dream of the philosopher, the aim of the lawgiver, the endeavour of the Judge, and the ultimate test of every government and every civilization.

CHANCELLOR WYTHE:

The unhappy condition of the appellee excites my commiseration; but courts of justice are not allowed to be controlled in their decisions by considerations of that character.

Compassion ought not to influence a judge, in whom, acting officially, apathy is less a vice than sympathy.

CHAPTER XXVI

THE SENTENCE OF THE COURT

The pronouncing of sentence is perhaps the most awesome duty a magistrate has to perform and while legal and penological literature is replete with what is wrong with the present sentencing procedure, no one has yet had the effrontery to set himself up as an expert on the subject, and certainly all judges and magistrates, in speaking or writing on the subject, are agreed that the system is far from perfect, but they know of no better one.

American jurists seem to be unanimous that the fundamental principle of sentence is the protection of society, and this is corroborated by the sentences Ontario magistrates see on criminal records imposed by American judges and other sentences still that we hear about but never see on criminal records for the very good reason that the prisoner will be in custody for the rest of his life on a sentence, for example, of 199 years or two life sentences for the same offender, to be served consecutively. But let us not be too smug about our American cousins; T. George Street, Q.C., Chairman of the National Parole Board, has reported that in Canada, two consecutive life sentences were recently imposed by a magistrate and a judge sentenced another offender to 80 years.

It has already been indicated how a magistrate should deal with picayune offences, and to give an example of what I mean by a picayune offence, I recall the case of three boys of 16 who were acting in a suspicious manner, looking at parked cars. A police officer kept them under observation intermittently and finally asked them what they were doing. One of the boys foolishly said: "We were going to pinch a couple of hub-caps off a car, if we could find the right kind of car." They were taken to the police station and there the Sergeant and the arresting officer had quite a legal discussion and from a strictly legal (or possibly legalistic) point-of-view, I suppose they came up with the right answer: the boys were charged with conspiracy

to commit theft. As there was no doubt that the boys had so conspired, they pleaded guilty, and I remanded them for sentence and ordered a pre-sentence report. The boys all came from good middle-class homes, were attending school, and in short, were good boys with good futures. What would a criminal record do for them, and particularly one for "conspiracy to commit theft." which sounds ominous in the extreme? As I read between the lines of the pre-sentence reports, the boy who told the police officer what they were planning to do was acting in a spirit of bravado, hoping to impress his colleagues with his indifference to the police, and expecting nothing but a stern warning and an order to go home. Quite obviously, if the boy had said: "We were just looking at this new Satellite car," nothing, of course, would have happened. The obvious thing to do, or so it seemed to me, was to give a copy of the pre-sentence report to the Crown and recommend that the charge be withdrawn, which was done. I do not think that the police or the courts will hear from those three boys again.

In another case of the same sort, or so I viewed it, the accused was charged with theft under \$50. He owned a Volkswagen car and in it, had promised to take his wife to see her mother in Peterborough the next day; in fact, she had nagged him a good deal about this, and told him, "I don't want any excuses this time." On the night before the expected trip, something went wrong with the car's distributor, and the accused tinkered with it all evening, refreshing himself from time to time with a bottle of beer. Eventually, he decided that the distributor couldn't be fixed, and what he needed was a new one, so he drove to the Volkswagen plant at about 11.00 p.m. The plant was closed, and the accused "borrowed" a distributor from a car parked on the lot, intending, as he said, to return on Monday morning, tell the manager what he had done, pay for a new distributor, and tell him to install it in the car from which he had taken it. Unfortunately, a police officer saw him removing the distributor, and the theft charge was laid. He was clearly guilty and so pleaded.

The pre-sentence report disclosed that he was in charge of the personal loan department of a bank; that his salary was over

\$400 per month; he had two children; he lived in a good neighbourhood; and he was the sole support of a widowed mother who lived apart from his wife and children. The pre-sentence report also had the ominous information that if he were convicted—not sentenced to gaol—he would be discharged from the bank, black-listed at all other banks and trust companies, and could never again be bonded.

The mixture, as before. He is still going strong at the bank, and has been given a promotion since.

Where this method of proceeding is not considered appropriate, then thought should be given to binding over, if the offence is one punishable on summary conviction (Code sec. 637), and of a trifling nature. The words used by the magistrate in binding over are not set out anywhere, but a satisfactory formula seems to be: "Adam Black, you are bound over in your own bond of \$1,000 to keep the peace and be of good behaviour for the term of two years towards the complainant, Dorothy Doe, all members of her family and all liege subjects of Her Majesty the Queen. This means that if you fail to keep all the conditions in the recognizance—that is, the bond—which you will shortly sign, you may be brought back to me, and if it is proved that you have not kept any condition of the bond, I will declare the sum of \$1,000 forfeited by you, and if you do not pay it, you will go to gaol. Is that clear?"

For persistent watchers or besetters, it might be added: "This means, among other things that you must not annoy, molest or interfere in any way with the comings and goings of Dorothy Doe; you must not go within one block of her home; you must not go within one block of the place where she works; and you must not telephone her either at her home or where she works upon any pretext or for any reason whatsoever."

And if that doesn't work, a magistrate can, if the offence is repeated, or if he thinks it likely to be, order one or more sureties to go bond for the accused, say, two in the amount of \$500 each.

If the accused refuses to sign the recognizance or if he cannot provide sureties; then an alternative jail sentence is provided.

If a withdrawal of the charge or a binding over does not seem to be the appropriate punishment, a magistrate should next consider suspended sentence and probation (Code secs. 638-640). If the magistrate thinks that suspended sentence and probation would effect the rehabilitation of the offender, then the protection of society is taken care of if the magistrate is right. And in this connection, it must be borne in mind that about 82% of offenders placed on probation never repeat; the figure varies from year to year.

If sentence is suspended, a recognizance must be signed by the accused, although it is not necessary to place him on probation. If the magistrate thinks that there is no point in having a recognizance signed, then he can, if the offence is a summary conviction one, bind him over.

We often read that some magistrate has sentenced someone to two years' suspended sentence, and we are aware, of course, that in some American courts (I hope not in any of ours) the accused is treated to this kind of performance: "Prisoner at the bar, you have been properly convicted of a most serious and heinous offence, for which the maximum penalty is life imprisonment. However, as you are a first offender, I am sentencing you to five years. (Long pause). This sentence will be suspended."

In the case of Canadian magistrates, I prefer to think that a careless reporter thought that suspended sentence and probation for two years was what he called "two years' suspended sentence".

In granting probation, we sometimes read of another magistrate imposing unusual conditions of that probation, and I must confess that on more than one occasion, I have been sorely tempted to order that the accused be taken to a barber for a conventional hair-cut as soon as he leaves the court, or that his black leather windbreaker with the bars of an American First

Lieutenant on the shoulders be confiscated, but up until now, I have resisted. If a magistrate punctiliously observes Code secs. 638-640, and omits to impose "such further conditions as (the court) considers desirable", he will be well-advised.

As for suspended sentence and probation generally, I refer my readers to a highly intelligent and exhaustive discussion of it in *O'Connor's Analysis and Guide to the Criminal Code* (The Carswell Company Limited: 1955) at pp. 242-257. It is useless for me to paint the lily or gild refined gold.

It would be ideal if magistrates could order pre-sentence reports in every case they tried, but at the moment, there are simply not enough probation officers, and the ones we have are overloaded and overworked now.

But it is possible, or will presently become so, for a magistrate to order a pre-sentence report of every first offender he tries on an indictable offence. It is impossible to exaggerate the importance of pre-sentence reports. While there is a tendency on the part of some probation officers to act as an advocate of the accused, there have been countless occasions when a pre-sentence report made it clear that an accused person was either not guilty of the offence charged (even although he pleaded guilty and had counsel) or there was enough doubt about the matter to warrant ordering his plea of guilty struck out and leave it to the Crown to see what they wish to do.

If the magistrate decides that the penalty to be imposed should be either a fine or imprisonment, he should first decide if a fine is the proper penalty. In Ontario, fines are usually imposed for first offenders convicted of common assault, vagrancy, driving while ability impaired by alcohol or drugs, public intoxication, bookmaking and kindred offences, being found in (common bawdy-houses, common gaming-houses, common betting-houses), creating a disturbance, various offences involving lotteries, ticket scalping, shoplifting (items of no great value), some kinds of fraud, such as n.s.f. cheques and fraud accommodation, failing to pay taxi-fare, all offences under *The Liquor Control Act* and *The Highway Traffic Act* (except when the offence of careless driving merits a gaol term) and many others,

when the magistrate is satisfied that a gaol sentence would not have the desired effect. The amount of it should be sufficient to deter the accused person from committing it again.

In Ontario, there is a lamentable lack of uniformity of the alternative time in gaol to a fine; we all read of sentences like \$10 or ten days; \$100 or seven days; \$50 or two months; and it cannot make much sense to anyone who follows our activities. I am going to have the effrontery to suggest to my colleagues that the alternative of time to money be one day for \$5. If the fine is to be \$10, then the alternative should, or so it seems to me, be two days; if the fine is to be \$100, then the alternative should be twenty days.

But then some exceptions become at once apparent. For simple vagrancy or begging, it seems to me the fine, for a first offence, should be \$5 or ten days. In either case, the accused is doubtless a derelict of society, but on the off-chance that the magistrate might be wrong, he will either have \$5, or will be able to raise it very quickly. But if the magistrate is right, he is doing the accused a favour in seeing to it that he gets ten days of shelter, care and adequate nourishment.

For care or control of an automobile while impaired by alcohol or drugs, it seems to me that the minimum penalty of \$50 should be reserved for the accused person who says: "I know I was drunk, so I pulled off to the side of the road to sleep it off." To drive while impaired is surely at least twice as reprehensible as trying to sleep it off, so a fine of at least \$100 would be warranted, depending upon the harm done by the driving. But the alternative time in gaol should be only seven days, as nobody should be heard to say that one accused person served seven days for drunk driving, while another served twenty days because he couldn't pay his fine of \$100.

For a first offence of public intoxication, it seems that the penalty should be \$10 or five days. Again the accused may be a social derelict and he may be a drunkard, as well. If he can pay his fine, well and good; if he can't, he will need the full five days to get rid of the after-effects of a protracted drinking bout

and correct the malnutrition that no doubt accompanied the excessive drinking. Again, the magistrate is doing him a favour.

Finally, however, let us say that the magistrate has come to the conclusion that a gaol sentence should be imposed. What are the purposes of punishment, anyway? How does a magistrate fix the length of the sentence? How does he determine whether it should be a long or a short sentence, or whether it should be a gaol or a penitentiary sentence?

First of all, a magistrate should never sentence an accused person when he is angry. The magistrate might very well be offended by the accused's behaviour or shocked and disgusted by the facts elicited at the trial. In such case, the wise magistrate remands the accused for sentence to a later time, and if necessary, keeps on remanding him until his anger has cooled.

Second, if there is any doubt at all in the magistrate's mind about the appropriate length of the sentence, again, he should remand the accused, so that he may reflect at length upon the case and, if he is wise, consult a colleague or colleagues.

As to the principles of punishment, Ontario magistrates are bound by the excellent judgment of the Ontario Court of Appeal delivered by Mr. Justice (J. Keiller) Mackay in *Regina v. Willaert*, 105 C.C.C., 172. At p. 175, Mr. Justice Mackay said:

I am respectfully of opinion that there are three principles of criminal justice requiring earnest consideration in the determination of punishment, *viz.*, deterrence, reformation and retribution.

The governing principle of deterrence is, within reason and common sense, that the emotion of fear should be brought into play so that the offender may be made afraid to offend again and also so that others who may have contemplated offending will be restrained by the same controlling emotion. Society must be reasonably assured that the punishment meted out to one will not actually encourage others, and when some form of crime has become widespread the element of deterrence must look more to the restraining of others than to the actual offender before the Court.

Reformation is the most hopeful element in the question of punishment in most cases, and it is in that direction that the efforts of those concerned with criminal justice will be more and more directed. But reformation, too, has its distinct limitations. It has been found in England that many who have passed through all the stages of binding over to keep the peace, probation, approved school, Borstal institution, and prison, have yet become habitual criminals. They appear to be beyond all human reformatory agencies.

The underlying and governing idea in the desire for retribution is in no way an eye for an eye or a tooth for a tooth, but rather that the community is anxious to express its repudiation of the crime committed and to establish and assert the welfare of the community against the evil in its midst. Thus, the infliction of punishment becomes a source of security to all and "is elevated to the first rank of benefits, when it is regarded not as an act of wrath or vengeance against a guilty or unfortunate individual who has given way to mischievous inclinations but as an indispensable sacrifice to the common safety": see Bentham, *Rationale of Punishment*, p. 20, quoted at p. 255 of *Halsbury, loc. cit.*

I am respectfully of opinion that the true function of criminal law in regard to punishment is in a wise blending of the deterrent and reformatory, with retribution not entirely disregarded, and with a constant appreciation that the matter concerns not merely the Court and the offender but also the public and society as a going concern. Punishment is, therefore, an art—a very difficult art—essentially practical, and directly related to the existing needs of society. A punishment appropriate today might have been quite unacceptable 200 years ago and probably would be absurd 200 years hence. It is therefore impossible to lay down hard and fast and permanent rules.

On October 4, 1958, Henry H. Bull, Q.C., Crown Attorney of the Municipality of Metropolitan Toronto, delivered a provocative address to a regional conference of magistrates in Toronto on the subject of sentencing. Dealing with imprisonment, Mr. Bull said:

The present trend of thinking in modern penology is that imprisonment should be used only as a last resort after all other means, such as juvenile and adult probation, have failed. Not only is it costly to the State but it can be profligate of human lives. A short term of imprisonment hastily or thoughtlessly imposed may so affect the offender that the worth of his whole life is destroyed and he becomes an increasing menace to his fellow citizens.

Once a child or youth has had experience of prison his subsequent reformation poses greater problems and doubts increase as to its ultimate success. There must inevitably be some contamination by others undergoing sentence and the restraint is likely to create antagonisms which may or may not be eliminated by subsequent treatment.

It would seem to me that the starting point for all judges and magistrates would be to familiarize themselves with the various types of institutions in which imprisonment will be served so as to estimate more accurately what the effect of imprisonment will be for the better or for the worse.

With that knowledge and with all the information that can be obtained about the offender, what then is the measure or yard-stick to be?

What has been done in other cases is no sure standard. No two cases are identical either in the way in which the crime was committed or in the persons of the criminals. In addition there is no guarantee that what was done in other cases was right. Bad precedents either of severity or leniency can be created and the evil done by them perpetuated and increased by following them. The judgment in other cases can be no more than a rough guide of what has been accepted if not acceptable in the past. Each case stands on its own feet.

This does not mean, however, that there is room for individualism. The path of non-conformity is never easy or popular and individual benches should subordinate their own inclinations to the general practice. We can ask no

more than that as much reason as is humanly possible be brought to bear on the problem.

Protection of society being the basic principle, it follows that if the convict is an unregenerate recidivist he should then be completely removed from society for as long as the law will allow. No human being can by some clairvoyance look into a crystal ball and say when such a person will be fit to return to society. The magistrate should not undertake to do so. There are agencies and means such as the Boards of Parole which can come into play if and when the convict demonstrates that he can be returned to society with safety.

The same principle applies in the case of the weak-minded and the psychopath. So often I have heard those factors offered as mitigating circumstances. They are not. They may be interesting in a study of causation in criminality but if a person is deficient in the power of self-control that is no reason for turning him back into society. On the contrary it should be where the offender has the capacity as well as the desire and will to amend his ways that the punishment should be mitigated.

This is not to say that the offender who has come from an environment where he has had a good upbringing should receive better treatment. We so often hear character evidence on behalf of a person that he has had the best of upbringing in home and school and Church. My reaction to that is that his culpability is greater than that of the slum boy who has never had the advantage of proper training, precept and example. The slum boy can to some extent be excused—the other cannot.

The short sentence, I feel, is of little if any value. It may be some measure of the expression of the disapproval of society of the particular type of crime and it may be some deterrent to others. So far as the offender is concerned, it affords no opportunity of reformation and reorientation. In many cases its deterrent effect on him is off-set by the

associations made while in prison and the mental attitude of the offender when he gets out—an ex-con, an ex-jail-bird.

The sentence for the young offender should be long enough to take full advantage of all the facilities for reformation. This will frequently result in terms which at first blush appear unduly long and severe—a year or more. A clear and public explanation of how this will be for the good of both individual and community would go a long way towards eliminating unjust criticism.

There is a natural tendency to measure the quantum of sentence by the extent of value of the damage done to persons or property in the commission of the offence. This can lead to anomaly and error.

Consider that perennial problem, the repeater of minor crime—the petty thief—serving a life sentence by instalments. With a record as long as your arm each time he is convicted of the theft of some article of paltry value and sentenced to 30 to 60 days we can be sure that he will be back before the Court again ere long. His sentence has failed to protect society. Its effect has been merely to increase the burden of the tax-payer. Is this not a case that calls for the two-year maximum sentence available?

Compare that with the cashier of otherwise good character who makes his first mistake of dipping into the till to play the stock market and then must keep on stealing to cover his losses until his thefts run to the tens of thousands of dollars. Finally detected, it is with relief that he pleads guilty, remorseful and penitent. The likelihood, if any, of a repetition by him is remote, the need for reformation is a minimum. Yet a term of years in the penitentiary seems to be considered appropriate. Is it?

Consider the pick-pocket. Should it make any difference to his sentence whether the pocket he picks contains three cents or \$3,000? Consider the disgruntled patron ejected from the bar who throws a brick through the window. Should it matter that the window turns out to be expensive

plate rather than double-diamond glass? Consider the person who steals from the mails. Does the fact that the stolen letter contained only a few cents mitigate the offence?

In this political economy of ours in which so much emphasis is placed upon monetary worth, caution must be exercised that a price-tag is not placed upon human conduct—that crime is not judged in terms of dollars and cents. The sentence is necessarily quantitative but it can only be assessed qualitatively—by the quality of the act—by the quality of the individual.

To these questions there is no simple answer—I offer none. If such there were, we should not be here today. My sincere hope is that these remarks will prove sufficiently provocative of discussion that they may in some measure contribute towards the solution of your problem.

Sentencing I deem to be one of the most taxing of human endeavours, productive of criticism rather than acclaim, calling for and demanding the highest in talent, energy, knowledge and above all, wisdom. I do not envy you in your task. That you come together in these seminars is an earnest of the conscientious approach of the magistracy to this problem. I thank you for this opportunity to join with you towards its solution.

It has never seemed to me to be part of a magistrate's duties to excoriate, vilify or abuse an accused person when he is sentencing him, yet we often read reports of judges and magistrates saying to an accused for example: "You have been convicted of a most dastardly, heinous offence and one which merits the most exemplary punishment," and then going on from there to let him have it with both barrels, and sometimes imposing a sentence that to an accused person who was the victim of the abusive language, must have appeared surprisingly light. If a magistrate is going to sentence an accused person to say, seven years, the accused must surely be well aware of what the magistrate thinks about him and his commission of the crime; he can get along very well without the whipped cream on top.

WHIPPING

As long ago as 1843, the then Commissioners on the Criminal Law reported to Parliament (in England): "We think that, so far from extending this species of punishment (corporal punishment of adult offenders), it would be better to reject it . . . It is a punishment which is uncertain in point of severity, which inflicts an ignominious and indelible disgrace on the offender, and tends, we believe, to render him callous and greatly to obstruct his return to any honest course of life."

This recommendation was carried into effect in England in 1862, but later in the same year, Parliament re-introduced whipping for robbery with violence only. In Canada it may be imposed as part of the sentence for attempted rape; armed burglary; choking; drugging, etc.; incest; indecent assault on male or female; rape; robbery; and sexual intercourse with a female under 14. Code sec. 641 deals with the machinery of the sentence and its execution.

The classic Ontario case on the subject is *Rex v. Childs*, 71 C.C.C., 70, where Mr. Justice Middleton said at p. 72:

Our reason for varying the sentence (by remitting the whipping) is the growth of public opinion on the subject of corporal punishment; and particularly, the Report of the Departmental Committee on Corporal Punishment in England made in March, 1938. That report deals with several matters not relevant to the point under consideration. These relate generally to corporal punishment administered to boys and young men. In England there has been provision for chastising youths with a birch rod. That practice has never prevailed in Canada so far as I know. There is also the subject of flogging as a punishment for offences in prisons and other institutions. This is a matter of great difficulty, because the accused being already in prison it is hard to know how, without corporal punishment, discipline can be enforced.

We have only to consider Part III of this report dealing with "Corporal Punishment by Order of the Superior Court of Criminal Jurisdiction." Corporal punishment of adults

provided by the Code is necessarily severe. Many think it is brutal. It represents the revulsion of the judicial mind from the horror of the crime committed. The villain who inflicted injury upon another, shall he not suffer? It is a survival of the *lex talionis*, an eye for an eye. Organized society has the right to protect itself by taking all necessary and proper steps to restrain the enemies of society, the criminals, by appropriate means; in ancient days by outlawry and even by death; now by imprisonment and, in the case of murder, by death. But modern thought revolts at the idea of torture, whipping and solitary confinement. The first idea is that society must be protected; the second is that the punishment must, if possible, tend to the reformation of the prisoner and his ultimate restoration to society.

I now venture to quote from this very elaborate, temperate and careful report, at p. 57:

"Corporal punishment is purely punitive; and it is out of accord with those modern ideas which stress the need for using such methods of penal treatment as give an opportunity for subjecting the offender to reformatory influences. We do not, of course, suggest that reformatory methods of treatment should not contain any punitive element; but we believe that, in view of modern developments in the treatment of offenders, special justification must be shown for the retention of a penalty which is purely punitive and contains no element of reform."

And at p. 58: "Not only does the corporal punishment itself contain no reformatory element, but it may also run counter to the reformatory influences which the sentence of detention is designed to bring to bear on the offender. . . . as a general rule the infliction of corporal punishment at the outset of a sentence of detention must tend to make the offender less amenable to reformatory influences, and thus reduce the chance that the period of detention will have a beneficial effect." And at p. 59: "In its own interests society should, in our view, be slow to authorize a form of

punishment which may degrade the brutal man still further and may deprive the less hardened man of the last remaining traces of self-respect."

And at p. 60: "The use of corporal punishment as a penalty for criminal offences by adults has been discontinued in all the fifteen foreign countries covered by this enquiry, with the sole exception of two States in the United States of America, where it is recognized by State law as a penalty for a limited number of offences. It may be said that, as a penalty for criminal offences by adults, corporal punishment has been abandoned by every civilized country in the world except those—i.e., the British Dominions and, to a very limited extent, the United States of America—in which the development of the criminal code has been influenced largely by the example of the English Criminal Law." A sentence of corporal punishment is clearly not reformatory, and its retention could therefore be justified only on the ground of its value as a deterrent—either in preventing the individual offender who suffers it from repeating his offence, or in discouraging others from committing similar offences. In our view, the retention of corporal punishment can be justified only if it can be shown (a) that a sentence of imprisonment or penal servitude combined with corporal punishment operates more effectively as a deterrent than a sentence of imprisonment or penal servitude not combined with corporal punishment; and (b) that for some offences or classes of offence sentences of imprisonment or penal servitude are so ineffective as deterrents that it is necessary, for the protection of society, to add a further penalty containing an exceptional element of deterrence.

The report then investigates and finds that there is no evidence that corporal punishment operates as a deterrent to further crime by the individual or by others. The often cited case by which the crime of garroting was said to have been abated by the infliction of whipping in all cases is demonstrated by actual facts and figures to be a myth.

This report has now been adopted by the British Parliament, and legislation has been enacted which makes corporal punishment to a large extent a thing of the past.

While we are content to remain among the backward nations of the earth and have upon our Criminal Code provisions for punishment having their origin in the dark ages, judges can do but little. Parliament alone can interfere. But in all these cases the provisions of the Code give to the judges of the land discretion; and it is, I think, our duty in all but very exceptional cases to exercise as a Court of Appeal our discretion by refusing to uphold sentences involving whipping.

For all serious crime where whipping is authorized by the Code, it is contemplated that there should be an extended term of imprisonment; but to have a deterrent effect it is essential that punishment should be swift and certain. Sporadic whippings have little effect on the evilly disposed when they are not uniform and may be indefinitely postponed. The amendment made by this year's Parliament contemplates a flogging shortly before the prisoner is released, and thus setting him a free man still smarting from the lash and more than ever an enemy of society.

In *Rex v. Smith et al.*, 94 C.C.C., 92, Chief Justice Robertson, giving judgment for the Ontario Court of Appeal, likewise remitted the whippings ordered in the case of four accused men convicted of armed robbery. He said, in part, at p. 94: "In delivering this judgment I will just add a word or two as to the matter of there being no lashes. It is not only the well-settled practice of this Court for a good many years, but also the well-settled practice in England for even a longer time, and in other jurisdictions, only to impose lashes for certain special offences—where there is something in the nature of brutality in connection with the crime."

So much for the law. In practice, "the lash" or "the cat" or "the paddle" may mean one thing in one penitentiary or gaol and quite another in another institution. Wardens who have served in more than one penitentiary have told me that

in one place it is a savage, inhuman punishment, while in another, it is not much more difficult to endure than shaking hands. Furthermore, the personality of the wielder of the lash or the cat or the paddle apparently has a good deal to do with whether the whipping is mild or severe. Perhaps, too, one is taking his orders from a humane Warden and another from a severe one. All this has been corroborated by ex-convicts and serving convicts to whom I have spoken on the subject.

So it would seem wise for a magistrate intending to impose whipping as part of a sentence, first to visit the penitentiaries or goals where the whipping is done, and ascertain precisely what happens there when an offender is whipped.

CONSECUTIVE OR CONCURRENT SENTENCES

Two decisions of the Ontario Court of Appeal are our guides here; the general rule is to make sentences consecutive for different offences: *Rex v. Whitney*, 87 C.C.C., 25. But this was departed from to some extent in *Rex v. Duguid*, (1954) O.W.N., 34. It would appear to be largely a matter of common sense and fairness.

If an accused person were charged, for example, with 75 offences of fraud which took place on 75 different occasions (obtaining goods by false pretences by using a stolen charge-plate from a department store), and the value of the items so procured varied from 65c to \$45.00, a magistrate would look pretty silly if by some mathematical formula he devised 75 consecutive sentences. For example, if he were to follow *Whitney* to the letter, he might say that for the 65c charge, he would impose one day's imprisonment; the \$45.00 charge, then, would merit a sentence of 70 days; and so on until he would appear ridiculous. In practice, what is done, of course, is to impose one sentence, or two or three, at the most, and make them all concurrent.

Many years ago, a newly appointed Western Canadian magistrate became quite annoyed at the many citizens in his

bailiwick who threw rocks through plate glass windows in the pious hope that they would be sentenced to a few months that would tide them over the winter months. His immediate predecessor had been only too glad to oblige, taking the charitable view that the unfortunate fellows should be looked after by the State in one way or another and comforted himself with the thought that the insurance companies which would have to pay for the windows had lots of money, anyway.

When the newly appointed magistrate heard about the case he was to try, he called in the Crown, and between them, they dreamed up eight separate charges and how valid they were, I cannot recollect, but no doubt they included wilful damage, vagrancy, creating a disturbance, unlawful entry, attempt break and enter and, for all I know to the contrary, moperly and gawk.

His Worship's disposition on eight pleas of guilty was simple and to the point: five years on each charge, the sentences to run consecutively. I am sorry to say I cannot recall how the matter turned out, but I do recall that for some reason or another, there was a great outcry in the newspapers of the day, and no doubt the imprisonment was remitted by the then Remissions Branch of the Department of Justice, probably to a fine of \$10 or five days, or to time already served by the time the Remissions Branch got around to the matter.

SENTENCES IMPOSED AT THE REQUEST OF THE ACCUSED

Now and again, an accused person will ask for a specific sentence, possibly, like the Western Canadian case, in order that he may spend the winter months in gaol. The nature of the offence is usually trifling, for example, vagrancy. It would seem the proper thing to do is to fine such an accused person \$1 or the time in custody he wants in the alternative. As a fine of \$1 or three months looks somewhat unusual, a note should be made on the Information that the sentence was imposed at the request of the accused. If he changes his mind, or if his circumstances change, it should not be difficult for him to raise the dollar to effect his liberty.

As for those accused persons who want a penitentiary sentence when the magistrate had contemplated a gaol sentence, there seems to be no good reason why the wishes of the accused cannot be granted; but again, it would be prudent to make the same note on the Information.

Sometimes, after a magistrate has sentenced an accused person to two years, the accused asks if instead, he may be sentenced to two years less a day so that he may serve his time in a gaol. He is doubtless a recidivist and has served time in a penitentiary and in a gaol as well, and prefers the latter. If he is a recidivist, and the magistrate accedes to his request, he will undoubtedly be sent to Burwash, where the inmates are all recidivists, too, so probably no harm will be done.

Similarly, after a magistrate has sentenced an accused person to two years less a day, when the accused asks instead if he may be sentenced to two years, there seems to be no good reason why his request should not be granted.

UNIFORMITY OF SENTENCE

One of the biggest and most important problems of the magistracy generally is to avoid the imposition of excessively lenient or excessively savage sentences and to have across the country, if possible, or at any rate in Ontario, something resembling uniformity of sentence. To achieve absolute uniformity of sentence is, of course, impossible, but I believe the magistrates of Ontario can come a lot closer to achieving it than they have up to now.

It is axiomatic to say that every case must be judged on its own merits, and that the penalty imposed should fit the offender and not the offence. By way of supporting the truth of the saying, Chief Justice McRuer of the Ontario High Court gave two examples of manslaughter trials; in one, the sentence was life imprisonment and in the other, suspended sentence and probation, and after he dealt with the facts in each case, it was manifest that both sentences were correct by any standard.

Leo Page, J.P., in his *For Magistrates and Others* has an interesting viewpoint. He says (p. 115):

"Only last week I was present in a court when seven cyclists were fined for not having lamps on their bicycles. They were of various incomes; some were married and some were single; some had children and some had not; one was out of work and the others in employment. But they were all fined 7s. 6d., which is the immutable tariff at that court for that offence. . . . It is always important to consider with great care the right amount of a fine, but it is *most* important, *most* essential, and *most* vital in the case of those persons whose income is near the subsistence level . . ."

I wonder what Mr. Page would think of the various traffic offence tariffs that are universal in all cities of Canada and the United States? For what he advocates, of course, is simply impossible with the present systems of court administration as they are. Perhaps, in a Utopia, a system such as is suggested by Mr. Page might be organized, but it would mean the creation of ten times the number of magistrates courts as we have now, if not twenty or thirty.

In the meantime, magistrates do their best to equalize such uniform sentences as traffic violation penalties by giving offenders not only time to pay their fines, but all the time they need, or they permit them to pay their fines in instalments. It would certainly be outrageous if a magistrate, for identical offences of running a red light (with no mitigating or aggravating circumstances), fined a millionaire \$1,000 and another offender who was on welfare 10c; yet apparently, that is what Mr. Page would have us do.

Now, if we have these uniform penalties for traffic violations universal—universal, that is to say, in each separate community; in Columbus, Ohio, running a red light will cost a motorist \$50; in Toronto \$20; and in some outposts of Empire in this country, \$5—why cannot uniformity of sentence be achieved in some other spheres, always provided, of course, that there are no mitigating or aggravating circumstances? There follows a list of offences with what seems to me to be an appropriate uniform sentence, and I am well aware that in setting these out, I am doing so with a good deal of temerity, if not foolhardiness.

But remember, I stipulate: (a) there are no mitigating or aggravating circumstances; (b) each is a first offence, unless otherwise specified; (c) abundant time should be granted to pay, unless otherwise specified.

<u>OFFENCE</u>	<u>SUGGESTED UNIFORM PENALTY</u>
Driving or in charge while intoxicated	15 days with the statutory minimum of seven days reserved for the accused who says he realized he was drunk, and pulled to the side of the road to sleep it off.
First offence	
Second and third offences	The statutory minimums, with prohibition of driving for two years on second offence; three years on third offence.
Driving Impaired	\$100 or 7 days, with minimum fine of \$50 or 7 days reserved, as in drunk charge.
First offence	
Second and third offences	The statutory minimums, with prohibition of driving as above.
Driving while disqualified	If deliberate, 30 days; otherwise a fine.
Assault police	30 days.
Obstruct police	If a riot threatened, 15 days; otherwise a fine.
Vagrancy	
(a) and (b)	\$5 or 10 days. No time to pay.
(c) First offence	\$100 or 20 days, less the time she has spent in custody. No time to pay.
Second offence	30 days less time spent in custody.
Third offence	Three months less the time spent in custody.

<u>OFFENCE</u>	<u>SUGGESTED UNIFORM PENALTY</u>
Public intoxication (not "Drunk")	
First offence	\$10 or 5 days. Time to pay.
Second offence (unless the magistrate wishes to invoke the provisions of the new sec. 106 (7) of <i>The Liquor Control Act</i>)	\$15 or 10 days. No time to pay.
Third offence, same exception	\$20 or 15 days. No time to pay.
Fourth offence, same exception	\$20 or 20 days. No time to pay.
Fifth and subsequent offences, same exception	\$25 or 30 days. No time to pay.
Fraud, n.s.f. cheque	If restitution, binding over; if not, a fine of double the amount of the cheque.
Fraud accommodation	If restitution, binding over; if not, a fine of double the value of the accommodation.
Wilful (not malicious) damage, \$50 or under	A fine of the amount of the damage with an order to pay the amount of the damage to the complainant.
Wilful damage, over \$50	Opportunity to make full restitution; if made, a fine in some relation to the amount of the damage; uniformity is impossible here.

<u>OFFENCE</u>	<u>SUGGESTED UNIFORM PENALTY</u>
Shoplifting (unless an operation of considerable ambition; one is reminded of the two men dressed in workmen's clothes who stole a rowboat from Eaton's and were arrested only when they returned to get the oars)	If value of articles under \$10, a fine, of \$25; if over, a fine of \$50.
Theft of newspapers from honour-system box	\$25 fine.
Pocket-picking	Six months.
Bookmaking (front end)	\$200 fine.
Bookmaking (back end)	A gaol term based on the scope of operations.
Ticket-scalping	A fine of twice the profit expected.
Fail pay taxi-fare	\$5 minimum fine; if fare over \$5 a fine of approximately the fare (provided the fine is paid; otherwise double the fine).

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APPENDIX A

HIGHWAY TRAFFIC OFFENCES, CODE NUMBERS AND FINES CURRENTLY IN EFFECT IN METROPOLITAN TORONTO

In including this list in the Manual, it is not suggested that the fines imposed in Metropolitan Toronto should be absolutely uniform in all parts of Ontario, but it is thought that the list should be included as a guide for magistrates throughout the Province.

The Code numbers are used in the administrative and accounting aspects of the court's work.

Copies of this list in a two-page form will be sent upon request to any Ontario magistrate or Justice of the Peace by the Administrator, Magistrates Courts, Municipality of Metropolitan Toronto, City Hall, Toronto 2B.

Section of Act	Code No.	Offence	Mailing Fine	Re-issue Fine
6	061	FAIL TO REGISTER A MOTOR VEHICLE	\$10.00	\$13.00
7	071	FALSE STATEMENT ON APPLICATION FOR PERMIT	....	....
	072	Fail to notify change of address (ownership)	10.00	13.00
		FAIL TO HAVE NUMBER PLATES		
8	081	No markers	10.00	13.00
	082	No front marker	5.00	8.00
	083	No rear marker	5.00	8.00
	084	Cardboard rear marker	5.00	8.00
	085	Marker improperly placed	5.00	8.00
	086	No motorcycle markers	10.00	13.00
	087	No front motorcycle marker	5.00	8.00
	088	No rear motorcycle marker	5.00	8.00
	089	No trailer marker	10.00	13.00

Section of Act	Code No.	Offence	Mailing Fine	Re-issue Fine
IMPROPER USE OF NUMBER PLATES				
9	091	Alter number plate	....	....
	092	Deface rear marker	\$10.00	\$13.00
	093	Remove number plate	10.00	13.00
	094	Illegal marker	....	....
	095	Fail to notify sale or purchase of vehicle	10.00	13.00
10	101	No other markers to be exposed	5.00	8.00
	102	Obstructed markers	5.00	8.00
13	131	No operator's licence	10.00	13.00
	132	Permit unlicensed driver	10.00	13.00
14	141	Fail to produce operator's licence	5.00	8.00
16	161	No chauffeur's licence	10.00	13.00
	162	Employ unlicensed chauffeur	10.00	13.00
	163	Restricted chauffeur's licence	5.00	8.00
17	171	Fail to produce chauffeur's licence	5.00	8.00
18	181	Permit minor to drive	5.00	8.00
19	191	Hire vehicle to unlicensed person	5.00	8.00
25	251	Illegally procure permit	....	....
	252	Illegally procure licence	....	....
31	311	No garage licence	10.00	13.00
32	321	Fail to keep record—used cars	10.00	13.00
IMPROPER LIGHTS				
33	331	Defective lights	3.00	6.00
	332	No clearance lights	3.00	6.00
	333	Red light on front of vehicle	5.00	8.00
	334	Rear marker not illuminated	5.00	8.00
	335	Parking lights	3.00	6.00
	336	No directional signals	5.00	8.00
DEFECTIVE EQUIPMENT AND UNNECESSARY NOISE				
35	351	Defective brakes	10.00	13.00
	352	Trailer, no brakes	10.00	13.00
37	371	Defective windshield wiper	3.00	6.00
	372	No windshield wiper	3.00	6.00
	373	No rear vision mirror	3.00	6.00
	374	No splashguards	3.00	6.00
38	381	Damage highway	5.00	8.00
41	411	Windows obscured	5.00	8.00
42	421	Defective or no muffler	5.00	8.00
	422	Excessive smoke—engine	3.00	6.00
	423	Unreasonable amount of smoke	3.00	6.00

Section of Act	Code No.	Offence	Mailing Fine	Re-issue Fine
42	424	Racing motor	\$ 3.00	\$ 6.00
	425	Squealing tires	3.00	6.00
	426	Unnecessary noise—horn	3.00	6.00
	427	Defective horn	3.00	6.00
	428	No horn	3.00	6.00
	429	Illegal use of siren	5.00	8.00
45	451	No separate means of attachment	5.00	8.00
48	481	Unsafe vehicle	10.00	13.00
49	491	Fail to give certificate of mechanical fitness	10.00	13.00
	492	False statement re certificate of mechan- ical fitness	10.00	13.00
51	511	No name on commercial vehicle	3.00	6.00
LOAD IN EXCESS OF PERMIT ISSUED				
53	531	Heavy vehicle, no permit	25.00	28.00
	532	Overwidth, no permit	5.00	8.00
	533	Overlength, no permit	5.00	8.00
	534	Fail to comply with limits of permit	50.00	53.00
54	541	Overload	10.00	13.00
	542	Fail to produce commercial vehicle permit	10.00	13.00
	543	Excess of half load	10.00	13.00
55	551	Refuse to go to scales	10.00	13.00
	552	Fail to produce inventory	5.00	8.00
56	561	Overhanging load	5.00	8.00
	562	Illegal or loose loading	5.00	8.00
58	581	Load too wide	5.00	8.00
	582	Single vehicle—overlength	5.00	8.00
	583	Combination vehicle—overlength	5.00	8.00
	584	Load too high	5.00	8.00
59	591	Speeding	....	....
60	601	Careless driving	....	....
61	611	Speeding on bridge	5.00	8.00
62	621	Unnecessarily slow driving	5.00	8.00
RULES OF THE ROAD				
63	631	Fail to yield way to vehicle on right	5.00	8.00
64	641	Stop street	20.00	23.00
	642	Stop street, street car	20.00	23.00
	643	Fail to yield right of way to vehicles on through highway	5.00	8.00
66	661	Disobey "yield right of way" sign	5.00	8.00

Section of Act	Code No.	Offence	Mailing Fine	Re-issue Fine
66	662	Fail to yield at "Right of Way" sign	\$ 5.00	\$ 8.00
67	671	Enter highway from lane, etc.	5.00	8.00
68	681	Improper right turn	10.00	13.00
	682	Improper left turn—right of way	....	....
	683	Improper left turn—cut corner	10.00	13.00
	684	Improper left turn—from one way	10.00	13.00
	685	Improper left turn—to a one way	10.00	13.00
	686	Improper left turn—from one way to a one way	10.00	13.00
69	691	Left turn, no signal	10.00	13.00
	692	Right turn, no signal	10.00	13.00
	693	Fail to signal, intention of stopping	10.00	13.00
70	701	Signal lights	20.00	23.00
	702	Signal lights—jump light	20.00	23.00
	703	Signal lights—street car	20.00	23.00
	704	Right turn, signal	10.00	13.00
	705	Right turn, signal—street car	10.00	13.00
	706	Obstruct pedestrian crosswalk—red light	5.00	8.00
	707	Obstruct crosswalk, street car—red light	5.00	8.00
	708	Obstruct pedestrian crosswalk—green and amber	5.00	8.00
	709	Obstruct crosswalk, street car—green and amber	5.00	8.00
	70A	Flasher signal	5.00	8.00
	70B	Caution on amber light	5.00	8.00
	70C	Signal—green arrow	20.00	23.00
	70D	Fail to yield right of way at intersection	10.00	13.00
	70E	Prohibited right turn on red sign	10.00	13.00
	70F	Pedestrian—signal lights	5.00	8.00
	70G	Pedestrian—"Don't Walk" and "Wait" signals	5.00	8.00
	70H	Fail to grant right of way to pedestrian	5.00	8.00
71	711	Fail to keep right—vehicle so met	5.00	8.00
	712	Fail to keep right—allow vehicle to pass	5.00	8.00
	713	Pass vehicle, left side—approaching traffic	5.00	8.00
	714	Pass vehicle, left side—overtaking traffic	5.00	8.00
72	721	Pass on grade	5.00	8.00
73	731	Pass vehicle on right	5.00	8.00
	732	Pass vehicle on right—on shoulder	5.00	8.00
75	751	One-way street	5.00	8.00
76	761	Improper lane change	10.00	13.00
	762	Obstruct passing lane	5.00	8.00

Section of Act	Code No.	Offence	Mailing Fine	Re-issue Fine
77	771	Highway divided in traffic lanes	\$ 5.00	\$ 8.00
	772	Crossing boulevard	5.00	8.00
78	781	Following too closely	10.00	13.00
79	791	Fail to stop—approach of ambulance	5.00	8.00
	792	Fail to stop—approach of fire or police	5.00	8.00
	793	Fail to stop—approach of public utility	5.00	8.00
81	821	Overcrowd driver's seat	10.00	13.00
82	822	Disobey wig-wag	5.00	8.00
83	823	Drive through barrier	5.00	8.00
84	824	Open vehicle door—street side	5.00	8.00
	825	Leave vehicle door open—street side	5.00	8.00
86	826	Pass standing street car	10.00	13.00
	827	Pass left side of street car	10.00	13.00
88	828	Fail to dim lights—approaching traffic	10.00	13.00
	829	Fail to dim lights—following traffic	10.00	13.00
89	82A	Runaway vehicle—improperly parked	5.00	8.00
	82B	No flares	5.00	8.00
	82C	Interfere with traffic	5.00	8.00
91	82D	Racing	....	....
93	82E	No sign—"Vehicle Stops at Railway Crossing"	5.00	8.00
95	82F	Solicit ride	5.00	8.00
	82G	Attempt to stop vehicle	5.00	8.00
97	82H	Pedestrian—wrong side of highway	5.00	8.00
98	82J	Deposit glass, etc., on highway	5.00	8.00
99	82K	Disobey sign	5.00	8.00
100	82L	Deface or remove signs	....	....
124	82M	Fail to return licence, permit and plates	10.00	13.00
	82N	Fail to surrender licence, permit, etc., to police	20.00	23.00
125	82O	Transfer permit	....	....
143	82P	Fail to report accident	....	....
144	82Q	Notification of damage	....	....

DISOBEY REGULATIONS UNDER THE ACT

811	Fail to notify change of address (operator's licence)	10.00	13.00
812	Temporary permit, unaccompanied	10.00	13.00
813	Temporary permit, no licensed driver beside driver	10.00	13.00
814	Use other person's licence	10.00	13.00
815	Lend driver's licence	10.00	13.00
816	Use altered driver's licence	10.00	13.00

Section of Act	Code No.	Offence	Mailing Fine	Re-issue Fine
	817	Dealer's markers—used for hire	\$10.00	\$13.00
	818	Illegal use of transit marker	10.00	13.00
	819	Permit dealer's markers	10.00	13.00
	81A	Restricted licence	10.00	13.00
	81B	No transit marker	10.00	13.00
	81C	Wreckers—Fail return permit and plates	10.00	13.00
	81D	Retain more than one licence	10.00	13.00
	81E	Improper registration	10.00	13.00
By-Laws		PARKING—\$10.00 TAG		
	902	No stopping area	12.00	15.00
		PARKING—\$5.00 TAG		
	903	No parking area	7.00	10.00
	904	No stopping at anytime	7.00	10.00
	905	Obstruct laneway	7.00	10.00
	906	Obstruct entrance to lane	7.00	10.00
	907	Obstruct entrance to drive	7.00	10.00
	908	Stop within 30 ft. pedestrian crosswalk	7.00	10.00
	909	Pedestrian crosswalk	7.00	10.00
	90A	Double parking	7.00	10.00
	90B	Safety Zone	7.00	10.00
	90C	Sidewalk	7.00	10.00
	90D	Bridge	7.00	10.00
	90E	Underpass	7.00	10.00
	90F	Adjacent to centre boulevard	7.00	10.00
	90G	Opposite excavation	7.00	10.00
		PARKING—\$2.00 TAG		
	911	Park prohibited area	4.00	7.00
	912	Park unreasonable time	4.00	7.00
	913	Park one hour limit	4.00	7.00
	914	Park half hour limit	4.00	7.00
	915	Park on boulevard	4.00	7.00
	916	More than 12" from curb	4.00	7.00
	917	Angle parking	4.00	7.00
	918	Improper angle parking	4.00	7.00
	919	Obstruct traffic	4.00	7.00
	91A	Yellow curb	4.00	7.00
	91B	Park on cab stand	4.00	7.00
	91C	Park—50 ft. dead-end street	4.00	7.00
	91D	Park—50 ft. level crossing	4.00	7.00
	91E	Park—wash or repair vehicle	4.00	7.00

Section of Act	Code No.	Offence	Mailing Fine	Re-issue Fine
By-Laws	91F	Park—vehicle for sale	\$ 4.00	\$ 7.00
	91G	Park on private property	4.00	7.00
	91H	Park—2 hour limit	4.00	7.00
	91J	Park 100 ft. of intersection	4.00	7.00
	91K	Park left wheels to curb	4.00	7.00
	91L	Park in such a position	4.00	7.00
	91M	Park on turf	4.00	7.00
	91N	Park—30 ft. of a corner	4.00	7.00
	91O	Park—50 ft. of a corner	4.00	7.00
	91P	Park—80 ft. of a street car stop	4.00	7.00
	91Q	Park—100 ft. of a bus stop	4.00	7.00
	91R	Park—120 ft. of a street car stop	4.00	7.00
	91S	Park—in front of a apartment building	4.00	7.00
	91T	Obstruct shipping entrance	4.00	7.00
	91U	Obstruct entrance to weigh scales	4.00	7.00
	91V	Obstruct entrance to theatre	4.00	7.00
	91W	Obstruct entrance to public building	4.00	7.00
	91X	Park—10 ft. of a hydrant	4.00	7.00
	91Y	Park in laneway	4.00	7.00
	91Z	Park—adjacent to school crossing	4.00	7.00
	921	Meter parking	4.00	7.00
	922	Improper meter parking	4.00	7.00
	931	Prohibited left turn	3.00	6.00
	951	Vehicle unattended	5.00	8.00
	961	Pedestrian by-law	5.00	8.00
	971	Pedestrian—improper use of crosswalk	5.00	8.00
		MISCELLANEOUS		
	991	"U" turn	5.00	8.00
	992	Prohibited "U" turn	5.00	8.00
	993	Prohibited right turn	3.00	6.00
	994	Disobey manual signal	3.00	6.00
	995	Street car—disobey manual signal	3.00	6.00
	996	Disobey detour sign	3.00	6.00
	997	Violate a barricade	5.00	8.00
	998			
	999	Speeding on bridge	5.00	8.00
	99A	Excess weight over bridge	5.00	8.00
	99B	Drive on boulevard	3.00	6.00
	99C			
	99D	Heavy loads prohibited	3.00	6.00
	99E	Fail to use curb lane	5.00	8.00
	99F	Vehicle, interfere with pedestrian traffic	5.00	8.00

Section of Act	Code No.	Offence	Mailing Fine	Re-issue Fine
By-Laws	99G		\$	\$
	99H			
	99J			
	99K			
	99L	Overcrowd a motor cycle	5.00	8.00
	99M	Unnecessary noise—street car with bell	3.00	6.00
	99N			
	99O			
	99P	Drive vehicle in park	2.00	5.00
	99Q	Ride motorcycle in park	2.00	5.00
	99R	Park on turf (no tag)	2.00	5.00
	99S	Fail to cover sidewalk with planks	5.00	8.00
	99T	Drive vehicle on sidewalk	3.00	6.00
	99U	Fail stop—crossing sidewalk	3.00	6.00
	99V	Fail to remove vehicle from street car tracks	3.00	6.00
	99W	Obstruct street car in motion	3.00	6.00
	99X	Intersect funeral procession	5.00	8.00
	99Z			

APPENDIX B

TRAFFIC OFFENCES AND DEMERIT POINTS

REVISED JULY 1, 1962

HOW THE POINT SYSTEM WORKS

DEMERIT POINTS are added to a motorist's driving record upon conviction for driving offences in accordance with the schedule following. The points are removed from the record two years after the date of the conviction.

AT 6 POINTS a driver receives a letter from the Ontario Department of Transport advising him of his record and urging him to take steps to improve his driving.

AT 9 POINTS a driver is required to attend an informal interview to discuss his record and to give reasons why his licence should not be suspended. He may be required to undergo a driver's examination; he may be placed on probation; or, if his attitudes reflect indifference to his responsibilities as a driver, his licence may be suspended. If he fails to attend the interview, his licence will be suspended.

AT 15 POINTS suspension is mandatory. The driver must surrender his licence for a period of 30 days and must pass a road test.

After suspension, points are reduced to 7. Thus a driver will be on probation and any additional points will again bring him to the interview level. If he again reaches 15 points within a two-year period, his licence will be suspended for 6 months.

If a driver pleads guilty to a traffic violation by paying a fine, either out of court or on court appearance, a conviction is automatically registered and the points are recorded.

POINT DEMERIT SCALE

<u>POINTS</u>	<u>VIOLATION</u>
7	Failing to remain at scene of accident (if convicted under The Highway Traffic Act)
6	Careless driving
6	Racing
6	Exceeding speed limit by 30 m.p.h. or more
5	Failure of driver of bus to stop at railway crossing
4	Exceeding speed limit by more than 20 m.p.h. and less than 29 m.p.h.
4	Failing to stop for school bus
4	Following too closely
3	Exceeding speed limit by more than 11 m.p.h. and less than 19 m.p.h.
3	Driving through, around or under railway crossing barrier

<u>POINTS</u>	<u>VIOLATION</u>
3	Failing to yield right of way
3	Failing to obey stop sign, signal light or railway crossing signal
3	Failing to obey directions of police constable
3	Failing to report an accident
3	Improper passing
3	Crowding driver's seat
3	Wrong way on a one-way street or highway
2	Predestrian cross-over
2	Failing to share road
2	Improper right turn
2	Improper left turn
2	Failing to signal
2	Unnecessary slow driving
2	Failing to lower headlamp beams
2	Improper opening of vehicle door
2	Prohibited turns
2	Towing of persons on toboggans, bicycles, skis, etc. prohibited
2	Failing to obey signs prescribed by regulation

Upon conviction for any of the following offences under the Criminal Code of Canada, suspension is mandatory for a period of 3 months to two years.

Motor manslaughter

Criminal negligence involving the use of a vehicle

Dangerous driving

Driving while intoxicated

Driving while ability is impaired

Failing to remain at the scene of an accident

(If convicted under the Criminal Code of Canada).

APPENDIX C

DEPARTMENT OF JUSTICE PENITENTIARY SERVICE

FULTON CHANGES ONTARIO, QUEBEC PRISON SYSTEM

Ottawa, May 14, 1962 (CP)—Justice Minister E. Davie Fulton today announced an organizational change in the penitentiary system with the creation of regional directorships for Ontario and Quebec.

Ontario regional director is David M. McLean, present warden of Kingston Penitentiary. He will oversee the Kingston complex of prisons—Kingston and Collin's Bay penitentiaries, Joyceville Institution, farm camps at Collin's Bay and Joyceville, work camps at Beaver Creek and Landry Crossing and the prison for women at Kingston.

J. R. Gregoire Surprenant, warden of St. Vincent de Paul Penitentiary, was named director of Quebec region with responsibility for the penitentiary, Leclerc and Valleyfield institutions, Gatineau correctional camp and St. Vincent de Paul farm camp, as well as two new medium security institutions to be built soon in the province.

V. S. J. Richmond, present warden of Collin's Bay Penitentiary, has been promoted to warden of Kingston Penitentiary. Michel Lecorre, deputy warden of Leclerc, has been appointed warden of St. Vincent de Paul Penitentiary.

Among other appointments, R. E. March was named to the new post of director of research at Ottawa headquarters. Walter Johnstone, a former Kingston Penitentiary warden and director of staff training for two years, takes Mr. March's place as director of organization and administration at Ottawa.

**Penitentiary Institutions Located in the
Province of Ontario**

1. **KINGSTON PENITENTIARY**—located in Portsmouth, Kingston, Ontario.
 - (a) Type: Maximum security institution.
Reception centre for all inmates sentenced to penitentiary within the Eastern Ontario Region;
 - (b) Population: approximately 900, to be gradually reduced down to approximately 500;
 - (c) Occupation: work in industrial shops;
 - (d) WARDEN: VICTOR RICHMOND.
2. **PRISON FOR WOMEN**—adjacent to Kingston Penitentiary.
 - (a) Type: Maximum security;
 - (b) Population: approximately 125;
 - (c) Occupation: vocational training and work in industrial shops;
 - (d) SUPERINTENDENT: MISS ISABELL MACNEILL.
3. **COLLIN'S BAY PENITENTIARY**—located six miles west of Kingston on Highway 33. Built in 1937.
 - (a) Type: walled institution, medium security; presently acting as parent institution to satellite camps. Large farm attached;
 - (b) Population: 450 plus 80 in minimum security farm camp;
 - (c) Occupation: vocational training;
 - (d) WARDEN: FRED SMITH.
4. **JOYCEVILLE INSTITUTION**—located 15 miles north of Kingston on Highway 15. Built in 1960.
 - (a) Type: modern medium security institution (fenced);

- (b) Population: approximately 450;
- (c) Occupation: farm work, industrial shops;
- (d) WARDEN: O. EARL.

5. BEAVER CREEK WORK CAMP—located near Gravenhurst and Bracebridge, using war-time establishment known as "Little Norway". Opened in 1961.

- (a) Type: minimum security camp;
- (b) Population: approximately 100 (when fully occupied);
- (c) Occupation: outdoor work projects;
- (d) SUPERINTENDENT: D. J. HALFHIDE.

6. LANDRY CROSSING WORK CAMP—located 12 miles northwest of Pembroke, between Petawawa and Chalk River on Highway 17. Opened 1961.

- (a) Type: minimum security "bush" camp;
- (b) Population: approximately 100 (when fully occupied);
- (c) Occupation: outdoor work projects;
- (d) SUPERINTENDENT: H. S. BELL.

7. FUTURE CONSTRUCTION:

- (a) Joyceville Farm Camp—minimum security camp to be built in 1962-63. Population 88;
- (b) New medium security institution—housing 400, to be built in 1964, location undecided;
- (c) New institution for Young Offenders—housing 400, to be built in 1965, location undecided.

APPENDIX D

THE DEPARTMENT OF REFORM INSTITUTIONS —and— ONTARIO'S CORRECTIONAL INSTITUTIONS

PART I

THE DEPARTMENT OF REFORM INSTITUTIONS

For many years prisons, reformatories and similar institutions in Ontario were administered by a branch of the Provincial Secretary's Department. Early in 1946 the Department of Reform Institutions was created and, commencing April 1, became responsible for the administration of all such institutions in the Province. The Department of Reform Institutions has jurisdiction over five Reformatories, three Ontario Training Centres, five Industrial Farms, three Treatment Centres, 35 County Jails, eight District Jails, two City Jails, eleven Training Schools and one Female Refuge.

Segregation of inmates follows classification which takes place in two stages. The first step in classification involves moving the inmate from whichever one of the jails in the Province he was sent from the Court, to the appropriate institution where he is to undergo sentence. This is based on the inmate's age, record and length of sentence imposed by the Court.

The second step in classification takes place at the Reformatories and Industrial Farms, after an appropriate portion of the inmate's sentence has been served. Here classification committees, acting upon the requests of inmates and the advice of specialists, may recommend some specialized treatment or training.

THE REFORMATORIES

The Ontario Reformatory, Guelph, in population is the largest institution under the control of the Department, with a daily population of 950-1,000. In the system of classification

and segregation, Guelph receives first offenders of all ages together with all offenders who are under 20 years of age. It has approximately 1,000 acres of land and arable sections are farmed. Guelph also maintains an outstanding dairy herd.

This is the Department's largest manufacturing centre. On arrival, inmates are assigned to their work by an EMPLOYMENT COMMITTEE which takes into consideration their past experience, interests, the length of sentence and the custodial risk involved.

Meat is processed in the abattoir. Fruit and vegetables are canned. Beds and sheet metal products are manufactured, and office furniture is produced in its planing mill. Clothing is made in its tailor shop.

Vocational courses are provided in bricklaying, carpentry, machine shop practice, auto mechanics, painting and decorating, plumbing and sheet metal. There is also opportunity for the attainment of further academic training.

The Ontario Reformatory, Mimico, is located in Mimico, eleven miles west of Toronto, and accepts short-term repeaters over 21 years of age, many of whom are alcoholics. The daily population is between 450 and 500. The Institution occupies 200 acres of land and the main industry is brick and tile making. Many inmates take part in the various stages from the drilling, blasting and loading of raw materials through the grinding, forming, drying and kiln burning to sorting and shipping. Mimico has its own farm and a herd of pedigreed Holsteins. Poultry and hog raising are featured. A modern machine shop is connected with the mill and provides maintenance for the institution. Younger inmates are placed in this shop for training and the skill acquired may enable them to follow this type of work when released. A shoe shop gives employment to from 20 to 25, manufacturing slippers and repairing shoes. Selected inmates are used on conservation projects.

Ontario Reformatory, Millbrook. The Ontario Reformatory, Millbrook, was opened in September, 1957. It is a maximum custody institution. It accommodates those who are extreme

behaviour problems, narcotic addicts and sex offenders. These inmates are given an opportunity to earn their way back to the Institution from which they came after evidence of an improved attitude on their part. Treatment is provided on a voluntary basis. It has accommodation for 250 prisoners. All provincial auto licence plates are made there.

The Andrew Mercer Reformatory for Women is situated in Toronto and accepts all women with Reformatory sentences. Accommodation is available for 160. Opportunity for training is provided in the sewing school, laundry, kitchen, dining-room, in housework, house-painting, hairdressing and gardening. The sewing school and laundry are equipped with up-to-date power machinery. Besides learning to operate sewing machines, button and button-hole machines, two-needle machines and serger, the inmates practise laying the patterns and cutting garments with an electric cutter. The Academic Department covers Grades I to X, inclusive, and the school is staffed by a group of three teachers. In addition there are vocational classes covering shorthand and elementary bookkeeping. Mercer also has a modern and well-equipped Home Economic Unit. Physical training is given.

Hobbies and handicraft are given an important place on the Institution programme and good work is being done in oils, pastels and water colours, as well as in shellcraft, artificial flower-making and ceramics.

Weekly meetings are held by Alcoholics Anonymous and Narcotics Anonymous, resulting in much benefit to certain inmates.

TRAINING CENTRES

The Ontario Training Centre, Brampton, provides accommodation for a selected group between the ages of 16 and 25 years, inclusive. Because it is a selected and youthful group, training is the first consideration, whether it be academic, vocational or recreational. Emphasis is placed on deportment and proper work habits, and the student is closely observed in all phases of his life in the institution. He spends one half of

each day in the vocational shop while two to five half-days are spent in the Academic School, depending on his academic grade. The grades range from Grade V to Grade X and where possible instruction is related to shop training. When the student has progressed far enough in his trade, his knowledge is put to practical use in the making of articles for use at Brampton and other institutions. Emphasis is placed on Physical Education with a view to developing a strong, healthy body and a sense of team play. A resident psychologist and social worker assist the students with their personal problems.

The Brampton Institution was opened on February 3, 1947, in a former Army Camp. There are no cells or bars. Escape is easy but it rarely occurs. The words "prisoner" and "inmate" have been replaced by the designation "student".

The Ontario Training Centre, Burtch, is located about seven miles south of Brantford. Recognizing the educational needs of this group of young inmates—16-24 years—who are illiterate or near illiterate, the Department established this Special Training Centre. While undergoing sentence here, the student has the opportunity to improve his educational standing and receives semi-skilled trade training. He is also able to secure psychological help with his problem of adjustment from the resident psychologist.

The Ontario Women's Guidance Centre, Brampton. This Guidance Centre for Women prisoners was opened on July 31, 1959, and has accommodation, at present, for 24 prisoners. It is operated along similar lines to the Training Centre for male prisoners at Brampton, that is, training is stressed, either academic or in vocational pursuits.

The inmates are a youthful and selected group who have the ability to benefit from the instruction provided. A Psychologist and Social Worker visit this institution frequently and their services are available whenever required.

The building is of one-storey construction and has a home-like atmosphere. There are no cells or bars on the windows. The doors are locked at night only.

INDUSTRIAL FARMS

The Industrial Farm, Burwash, has 35,000 acres of land and accommodates 700 prisoners. Lumbering is the chief industry and a sawmill has been in operation there for many years.

About 4,000 acres are under cultivation. A registered herd of Holsteins is maintained for milk production and a large herd of Herefords raised for beef. Due to the age of the inmates fewer are enrolled in the classes and emphasis is given to vocational training, rather than to pure academic pursuit. ON THE JOB TRAINING is afforded in daily tasks on the farm or in the bush, in the mill, the tailor shop, laundry, construction work, painting, firing high pressure boilers and electrical work. A Vocational Training School has two well-equipped shops for machine shop practice and sheet metal work. Burwash receives repeaters 20 years of age and over. Selected groups of inmates are used to fight forest fires, in reforestation and in the establishment of public camp sites.

The Industrial Farm, Monteith, is located about 40 miles south of Timmins and receives repeaters with definite sentences up to a year. The Institution has a good farm, a dairy herd and a modern dairy. Selected groups are employed under the supervision of the Department of Lands and Forests at reforestation. Monteith inmates are also engaged in land conservation and the development of tourist camp sites.

The Rideau Industrial Farm is situated at Burritt's Rapids about 40 miles from Ottawa. The population is made up of repeaters with definite sentences up to one year. The inmates are employed at farming and reclaiming and conditioning waste land and the development of forestry nurseries. Rideau also maintains a tailor shop and manufactures picnic tables for the Department of Lands and Forests.

The Industrial Farm, Fort William, accepts repeaters with definite sentences up to one year. The property was formerly used by the Department of Health as an Ontario Hospital but was transferred to this Department in 1955. Inmates are employed at farming.

The Industrial Farm, Burtch, as distinct from the Ontario Training Centre, Burtch, accepts repeaters with definite sentences up to one year. The inmates are employed at farming, tailoring, the manufacture of concrete blocks, survey monuments, snow fencing and the canning of fruit and vegetables.

SPECIAL TREATMENT CENTRES

The Alex G. Brown Memorial Clinic is operated as a separate unit in a building on the Mimico Reformatory property. There is no age limit and the patients are drawn from the Reformatories and Industrial Farms of the Province. Treatment is provided at the request of prisoners with an alcohol problem who are then screened before treatment is given. A few are excluded for medical reasons or lack of proper motivation.

Treatment is given during the last 30 days of the patient's sentence and involves supplying the patient with an understanding of his alcoholic and personality problems and initiating the medical, psychological, social and spiritual help required for successful solution to his problem. A male convicted under sec. 80 (2) of The Liquor Control Act may be sentenced directly to the clinic under sec. 106 (7).

The Neuro-Psychiatric Centre is located at the Ontario Reformatory, Guelph. There is no age limit but all patients are male. Transfer to the Centre is made on medical recommendation. The Centre is used for the investigation and treatment of psychiatric and neurological patients, and for research.

Drug Addiction Clinic. In January, 1956, the Department opened this Clinic where male inmates, who are addicted to narcotics, may receive treatment for their addiction. The Clinic has accommodation for 25 patients and is considered as a pilot unit, capable of expansion if experience shows the need for a larger unit. For administrative purposes, it is combined with the A. G. Brown Clinic for Alcoholics. In other respects it is self-contained and is a closed unit, in contrast to the open institutions of the Department.

Patients are accepted on a voluntary basis and the treatment period covers the last three months of the patient's sentence. There is no age limit.

Post-discharge rehabilitation is the responsibility of the Clinic staff and the Parole and Rehabilitation Officers of the Department.

RESEARCH AND POST-GRADUATE TEACHING

A number of research projects are being carried out under the direction of the Department's Research Consultants and annual training fellowships are given to graduate students in psychology, psychiatry and social work.

PAROLE AND AFTER-CARE

Parole—The Ontario Parole Board which has an establishment of five members meets at the Reformatories and Industrial Farms each month. The Board interviews prisoners on one or more occasions, as it may decide. It has jurisdiction to grant parole in the indeterminate portion of a sentence. Prisoners are placed on parole under the supervision of Parole and Rehabilitation Officers. During the fiscal year 1958-59, 2,073 prisoners appeared before the Board for Parole for consideration.

The After-Care Programme is designed to provide former inmates with direction and practical assistance to aid in their rehabilitation. During the fiscal year 1958-59, 6,637 individuals released from Reform Institutions, received assistance in securing employment, or were provided with essentials to ensure that they were suitably equipped for employment. The rehabilitation officers devote much time to following the progress of men assisted by this programme and the majority of men have shown appreciation of the friendly supervision and encouragement.

STAFF TRAINING

Staff Courses are conducted in a Staff School at Guelph. The faculty consists of experienced officials from Guelph and other institutions and is augmented by visiting lecturers, each a specialist in his own field.

INSTITUTIONS FOR JUVENILES

The Department maintains four Ontario Training Schools for Boys. One is ideally situated close to the town of Bowmanville and has an average population of 215 boys, 14 to 16 years of age.

The second Ontario Training School for Boys is located on the outskirts of Cobourg. It takes care of the younger boys under 14 and has an average population of 175 boys. The programmes at Bowmanville and Cobourg are divided into departments, for it is through a healthy vigorous activity-motivated programme that an effort is made to catch the interest of each boy, an interest that is nurtured and enlarged to such a degree that boys strive for success. Many boys when they reach the Training School have lost interest in school and the process of leading them back to their books calls for infinite patience and skill. The curriculum and methods are subject to the same inspection by the Department of Education as any other school in the Province. Psychological, Psychiatric and Social Work services are provided at both schools.

The programme for the younger boys at Cobourg is mainly academic but manual training, gardening, cleaning and cooking provide useful work and opportunities for training. At Bowmanville, where the boys are older, the programme for boys may be full-time academic work, half-day academic and half-day vocational or full-time vocational. The following vocational subjects are available at Bowmanville: woodworking, machine shop, sheet metal, shoe repairing, typing, horticulture, cooking, barbering and laundry work. Both schools stress Recreation and Arts and Crafts.

A new Ontario Training School for Boys was opened at Guelph in January, 1958. It is a closed school with accommodation for up to 50 boys who have proven unmanageable in the more open schools. Students are given academic and vocational training. Psychological, Psychiatric and Social Work services are also provided.

Early in 1960 a Reception and Diagnostic Centre for Girls was opened on the grounds of the Ontario Training School, Galt. This Centre operates in two sections. The Reception and

Diagnostic section receives newly committed girls who are tested and orientated before proceeding to one of the Training Schools proper. The Treatment section receives from other Training Schools girls whose emotional behaviour tends to disrupt the normal curriculum of these Schools. These girls receive treatment, including psychiatric, psychological and social work services, if indicated, before being returned to their schools.

The Reception and Diagnostic Centre, although on the grounds of the Galt School, is administered separately from that School.

The Department operates a Training School for Girls in the City of Galt. The school has a varied programme, designed to meet the needs of the girls who are sent or committed there. The Academic School covers up to Grade X and Home Economics and Commercial Courses. Other activities in the school provide means for performing the work and at the same time instruction in skills expected of young women: the washing and ironing of personal clothing. There is the sewing class and work in the kitchen. All girls receive practical training in housekeeping. Galt has its own beauty shop where girls may receive training in hairdressing. Psychological and psychiatric services are provided. Galt admits girls under 16 and has an average population of 160.

A small Ontario Training School for Girls was opened on August 1, 1959, at Port Bolster on Lake Simcoe. It was a large residence converted for the purpose and accommodates 20 girls who are transferred from the Ontario Training School at Galt.

The girls selected are those of the younger age group who, it is considered, will benefit from the more homelike atmosphere and surroundings at this school. As these girls are of school age academic studies are given the greatest attention together with training in the usual housekeeping duties. High School students attend school in the community.

The Roman Catholic Church operates two training schools for Catholic boys and one for girls. The St. Joseph's Training School for Boys is situated at Alfred, with accommodation for 160 boys, and the St. John's Training School located at Uxbridge, with accommodation for 150 boys. The St. Mary's Training

School for Girls is situated at Downsview, Toronto, Ontario, with accommodation for 160 girls. The Boys' Schools are operated and supervised by the Christian Brothers of the Roman Catholic Church and the Girls' School at Downsview by Sisters of the Good Shepherd. These schools are well managed and over a period of many years a programme has been developed to meet the needs of that group.

Every child sent or committed to a Training School becomes a ward of the school until he or she reaches the age of eighteen or wardship is relinquished.

A Training School Advisory Board consisting of five members appointed by the Lieutenant Governor in Council meets weekly to review reports from the schools regarding progress in training and on placement, recommendations for placement and termination of wardship.

PART II

ONTARIO'S CORRECTIONAL INSTITUTIONS

JUVENILE

Training Schools Advisory Board,
Department of Reform Institutions,
Parliament Buildings, Toronto 2, Ontario.

Chairman: Rev. M. W. Pinker, O.B.E.

Executive Assistant: D. Sinclair.

Ontario Training School for Boys,
Bowmanville, Ontario.

Boys 14 to 16 years of age.

Superintendent: J. Bain.

Ontario Training School for Boys,
Cobourg, Ontario.

Boys up to 14 years of age.

Superintendent: G. W. Pollard.

Ontario Training School for Boys,
Guelph, Ontario.

Boys up to 18 years of age.

Superintendent: D. Williams.

Ontario Training School for Boys,
Simcoe, Ontario.

Boys up to 18 years of age.

Superintendent: H. Garroway.

Ontario Training School for Girls,
Lindsay, Ontario.

Girls up to 18 years of age.

Superintendent: Miss E. Mailer.

Ontario Training School for Girls,
Galt, Ontario.

Girls up to 16 years of age.

Superintendent: Rev. H. L. Wilson.

Reception and Diagnostic Centre,
Ontario Training School for Girls,
Galt, Ontario.

Girls up to 18 years of age.

Superintendent: Mrs. E. M. Hunt.

Ontario Training School for Girls,
Trelawney House, Port Bolster, Ontario.

Girls up to 16 years of age.

Superintendent: Mrs. M. E. Jansen.

St. John's Training School (private),
Uxbridge, Ontario.

Catholic boys up to 16 years of age.

Superintendent: Brother Adrian, F.S.C.

St. Joseph's Training School (private),
Alfred, Ontario,

Catholic boys up to 18 years of age.

Superintendent: Brother Gilles, F.S.C.

St. Mary's Training School (private),
3044 Dufferin Street, Toronto 19, Ontario,

Catholic girls, if admitted before their 16th birthday.

Superintendent: Mother Mary of St. Agatha, R.G.S.

ADULT

Ontario Training Centre,
Brampton, Ontario.

Selected male prisoners, 16-25 years of age.

Superintendent: H. M. Hooper, M.B.E.

Ontario Reformatory,
Elliot Lake, Ontario.

Male offenders between 16 and 19 years of age, inclusive and male first offenders 20 years of age and over.

Superintendent: R. B. Masecar.

Ontario Reformatory,
Guelph, Ontario.

Male offenders between 16 and 19 years of age, inclusive, and male first offenders 20 years of age and over.

Superintendent: C. Sanderson.

Ontario Reformatory,
Mimico, Toronto 14, Ontario.

Short-term male repeaters 20 years of age and over, many of whom are alcoholics.

Superintendent: E. Griffin.

Ontario Reformatory,
Millbrook, Ontario.

Male offenders—16 years of age and over—intractable types, drug addicts and sex offenders. Treatment and research. Maximum custody.

Superintendent: J. M. Marsland.

Andrew Mercer Reformatory for Women,
1155 King Street West, Toronto, Ontario.

Women, 16 years of age and up.

Superintendent: Mrs. J. T. Burrows.

Ontario Reformatory for Women,
Brampton, Ontario.

Guidance and training centre for selected young female offenders 16 years of age and over.

Superintendent: Miss A. Mills.

Burtch Industrial Farm,
Brantford, Ontario.

Male prisoners 20 years of age and over with maximum sentence of 12 months (including the Ontario Training Centre).

Superintendent: J. R. Morris.

Rideau Industrial Farm,
Burritt's Rapids, Ontario.

Male prisoners 20 years of age and over with maximum sentences of 12 months.

Superintendent: C. M. Gillespie.

Industrial Farm,
Burwash, Ontario.

Male recidivist prisoners 20 years of age and over with sentences of 6 months or longer.

Superintendent: J. D. Heddle.

Industrial Farm,
Monteith, Ontario.

Male prisoners 20 years of age and over with maximum sentences of 12 months.

Superintendent: J. Irvine.

Industrial Farm,
Fort William, Ontario.

Male prisoners 20 years of age and over with maximum sentences of 12 months.

Superintendent: G. J. Gauthier.

Alex G. Brown Memorial Clinic,
Mimico, Ontario.

Alcoholic prisoners.

Superintendent: E. Maxted.

Psychologist: S. Cook.

Consultant: Dr. R. G. Bell.

Drug Addiction Clinic,
Mimico, Ontario.

Superintendent: E. Maxted.

Psychologist: S. Cook.

Consultant: Dr. R. G. Bell.

APPENDIX E

CONSTITUTION
—of—
THE ONTARIO MAGISTRATES' ASSOCIATION

NAME

1. The name of the Association shall be "The Ontario Magistrates' Association".

PURPOSES

2. The purposes for which the Association is formed are:

- (a) To discuss and study the administration of criminal justice generally; and particularly, the administration of criminal justice in Magistrates' Courts in the Province of Ontario;
- (b) To create uniformity, as well as may be done, in the procedure of Magistrates' Courts in the Province of Ontario;
- (c) To create uniformity, as well as may be done, in the sentencing of offenders in Magistrates' Courts in the Province of Ontario;
- (d) To discuss and study existing criminal and quasi-criminal law and recommend to the appropriate authorities such amendments thereof as may be considered to be meet and proper;
- (e) To discuss and study all matters pertaining to the duties and welfare of Ontario Magistrates and recommend to the appropriate authorities such action as may be considered to be meet and proper;
- (f) To keep all Ontario Magistrates, whether members of the Association or not, informed on all matters pertaining to their duties.

MEMBERSHIP

3. All Ontario Magistrates are eligible for active membership in the Association, the annual fee being \$25.00 a year, payable on January 1 of each year, provided, however, that the Executive Committee may, in its absolute discretion, impose assessments on members, not to exceed a total of \$10.00 in any calendar year.

4. Active membership in the Association shall cease upon the resignation or retirement of any member from the Ontario Magistracy, or upon the resignation of any member from the Association.

5. Any member of the Association who has ceased to be a Magistrate may be elected to Honorary Life Membership in the Association by unanimous vote at any Annual Conference of the Association. Honorary Life Members are absolved from the payment of annual membership fees, but may not hold office or vote at the Annual Conference of the Association.

OFFICERS

6. The officers of the Association shall be a President, a First Vice-President, a Second Vice-President and a Secretary-Treasurer. They and the Auditor shall be elected at each Annual Conference of the Association and their election shall be the last item on the agenda of such Annual Conference and their terms of office shall take effect upon the adjournment of such Annual Conference and shall last until the election of their successors at the next following Annual Conference. No member of the Association except the Secretary-Treasurer and Auditor shall be eligible for re-election in an office formerly held by him.

7. The President shall preside at the Annual Conference of the Association and all meetings of the Executive Committee; in his absence, the First Vice-President shall do so; in the absence of both the President and the First Vice-President, the Second Vice-President shall do so; in the absence of all three, the Annual Conference or the Executive Committee as the case may be, shall elect a temporary presiding officer who will have all powers which the President would have had, had he been present and

presiding. The President or acting President shall make a report of the Association's activities during the President's tenure of office at the Annual Conference.

8. The President shall not vote in the first instance at the Annual Conference or at any meeting of the Executive Committee, but in the event of a tie vote, he shall vote to break the tie.

9. The President shall be an *ex officio* member of all standing and special Committees, and as such, may vote at meetings of the Committees.

10. The Secretary-Treasurer shall be the custodian of all records and archives of the Association, and shall preserve and record its transactions. He shall take minutes of the Annual Conference and send copies thereof to the members. He shall take minutes of all meetings of the Executive Committee and send copies to the members of the Executive Committee.

11. The Secretary-Treasurer shall collect fees from the members of the Association and shall be the custodian of the moneys of the Association, none of which shall be disbursed by him without the authority of the Annual Conference or the Executive Committee, either beforehand, or by approval of such disbursements he may have made by the Executive Committee, or by the adoption of his report at the Annual Conference.

12. The Secretary-Treasurer shall submit a report to the Annual Conference for its adoption or rejection, as the case may be, by majority vote. In the event of its adoption, everything done by the Secretary-Treasurer during his tenure of office since he was last elected shall be taken to have full approval of the Association; in the event of its rejection, the report shall be submitted to the Executive Committee for such action as they may deem meet and proper.

13. The funds of the Association shall be kept by the Secretary-Treasurer in a chartered bank, Trust Company or Province of Ontario Savings Office, the identity of which or any Branch of which shall be in his absolute discretion.

14. By a majority vote, the Secretary-Treasurer may be voted an honorarium at the Annual Conference.

THE AUDITOR

15. The Auditor may or may not be a member of the Association. He shall audit the books of the Secretary-Treasurer before each Annual Conference in sufficient time for him to submit a report, in person or in writing, as may be convenient, certifying the books of the Association, as kept by the Secretary-Treasurer, are correct, or as the case may be. If he certifies that the books are correct, his report shall be placed before the Annual Conference for approval or disapproval. If his report is disapproved or if he certifies that the books are not correct, his report shall be submitted to the Executive Committee for such action as they shall deem meet and proper.

SIGNATURE OF DOCUMENTS

16. All cheques of the Association, to be valid, shall be signed by the Secretary-Treasurer of the Association.

17. Any document to be signed on behalf of the Association, excluding cheques, shall, to be valid, be signed by the President, the First Vice-President and the Secretary-Treasurer or any two of them.

ELECTION OF OFFICERS

18. On the first morning of the Annual Conference, the President shall appoint a Nominating Committee, composed of all active members present at the Conference who have been President of the Association. The Nominating Committee shall make its report on the afternoon of the second day of the Annual Conference and shall nominate: (a) Its candidates for officers of the Association; (b) Its candidate for Auditor of the Association; and (c) Its other candidates for membership in the Executive Committee.

19. After the Nominating Committee has made its report, the President shall call for other nominations for each officer of the Association and the Auditor in turn and for other nominations for membership in the Executive Committee.

20. If there are two candidates for any office of the Association or the Auditor, a secret ballot shall be cast by each member, and the candidate receiving a majority of the votes shall be elected.

21. If there are more than two candidates for any office of the Association or the Auditor, a secret ballot shall be cast by each member, and the candidate receiving a majority of the votes shall be elected. If, however, no candidate has a majority, the candidate having the smallest number of votes shall be eliminated from the balloting and voting shall proceed in the same fashion until a candidate has a majority, when he shall be elected. If any candidates are tied for the smallest number of votes, no candidate shall be eliminated, but another ballot shall be taken, voting on the same candidates.

22. If there are more than 15 candidates proposed for membership in the Executive Committee (excluding the officers), a single secret ballot shall be cast by each member, and the 15 members receiving the most votes shall be declared elected. A member may vote for any number of candidates for the Executive Committee, not exceeding twelve. In the event that there is a tie for the 15th position, another ballot shall be taken to fill the 15th position by voting for the candidates so tying, and the candidate receiving a majority of the votes shall be elected. If, however, no candidate has a majority, the candidate having the smallest number of votes shall be eliminated from the balloting and voting shall proceed in the same fashion until a candidate has a majority, when he shall be elected. If any candidates are tied for the smallest number of votes, no candidate shall be eliminated, but another ballot shall be taken, voting on the same candidates.

23. During nominations, a motion that nominations be closed for any officer, the Auditor or the members of the Executive Committee, is in order and is not debatable.

24. In the event that voting for any officer, the Auditor or members of the Executive Committee proceeds by ballot, as provided by this Constitution, three scrutineers shall be elected by the Annual Conference, none of whom shall be a candidate

for the office for which the balloting is called. The scrutineers shall count and tabulate the ballots and certify their findings over their signatures to the President.

THE EXECUTIVE COMMITTEE

25. The Executive Committee shall consist of the officers and the immediate past President of the Association and 15 members elected at the Annual Conference. The terms of office of the 15 members of the Executive Committee so elected shall take effect upon the adjournment of the Annual Conference at which they were elected and shall last until the election of their successors at the next following Annual Conference.

26. The Executive Committee shall conduct, manage and arrange the business and affairs of the Association between Annual Conferences; they shall organize the programme, agenda and entertainment for each Annual Conference, they may do all things on behalf of the Association not particularly provided herein to be done at an Annual Conference of the Association.

27. Vacancies in the Executive Committee may be filled by election by the Executive Committee.

28. Meetings of the Executive Committee may be held at any time and place on the written call of the President with seven clear days' notice, or by any five members of the Executive Committee on their written call with fourteen clear days' notice.

29. All active members who have been Presidents of the Association shall be invited to attend all meetings of the Executive Committee but they may not vote at such meetings.

THE ANNUAL CONFERENCE

30. The Annual Conference of the Association shall be held at a time and place to be decided by the Executive Committee. No more than fifteen months shall elapse between Annual Conferences.

31. The Annual Conference shall be called to order at ten o'clock on a Friday morning and finish on the next afternoon.

SPECIAL GENERAL MEETING

32. Special general meetings of the Association may be held at any time and place on the written call of the President with 30 clear days' notice, or by any 15 members of the Association on their written call with 30 clear days' notice.

COMMITTEES

33. The standing committees of the Association shall be:

- (a) The Education Committee;
- (b) The Law Reform Committee;
- (c) The Probation Committee;
- (d) The Committee on Sentences;
- (e) The Uniformity of Court Procedure Committee;
- (f) The Constitution Committee;
- (g) The Committee on Information and Public Relations.

34. The President, as soon as conveniently may be after taking office, shall appoint Chairmen of all standing Committees, and each Chairman shall appoint the members of his Committee, no Committee to consist of less than four members, including the Chairman. Such Chairmen shall inform the President and the Secretary-Treasurer of the personnel of their Committees within 14 days of their appointment.

35. In addition to the standing Committees, the Executive Committee may appoint a Chairman of any special Committee, to study and report on any matter affecting the Ontario magistracy. Each such Chairman shall appoint the members of his Committee, which shall consist of no less than four members, including the Chairman. Such Chairman shall inform the President and the Secretary-Treasurer of the personnel of their Committees within 14 days of their appointment.

36. A meeting of any Committee of the Association may be held at any time and place on the written call of its Chairman with seven clear days' notice, but notice of any such meeting may be waived by any members of any Committee before or after such meeting.

37. If the Chairman of any Committee is not present at any meeting of any Committee, the members of the Committee shall elect a temporary Chairman.

38. The Chairman of each Committee shall make an annual report of his Committee at the Annual Conference.

QUORUMS

39. A quorum of the Association shall be 20; a quorum of the Executive Committee shall be five; a quorum of any Committee shall be two.

PARLIAMENTARY PROCEDURE

40. The following motions are always in order and are not debatable:

- (a) a motion for the previous question;
- (b) a motion to recess;
- (c) a motion to adjourn.

41. All meetings of the Association and its Committees shall be conducted in accordance with Canadian parliamentary procedure.

AMENDMENTS

42. This Constitution may be amended at any Annual Conference upon a motion by any member, seconded by another, on 24 hours notice, passed by a majority vote of the members present at such Annual Conference.

APPENDIX F

1961 AMENDMENTS TO THE CRIMINAL CODE

Amendments to the *Criminal Code* made by S.C. 1961, chaps. 43 and 44, adding, repealing or amending the following sections are set out in this Appendix.

Code secs.	2 (9)	—Court of Appeal
	3 (7)	—Service of process
	178 (1)	—Race meetings
	202A	—Classification of murder
	206	—Punishment for murder
	221 (4)	—Dangerous driving
	225 (1)	—Order prohibiting driving
	225 (3)	—Driving while disqualified
	226A	—Dangerous operation of speed boats
	273	—Theft of services
	304 (4)	—Cheque issued without funds
	307 (3)	—Cheque defined
	315	—False messages
	316 (1) (3)	—Threatening letters
	384 (2)	—Boundary marks
	421 (3)	—Jurisdiction
	421 (a)	—Offences outstanding
	435	—Arrest without warrant
	441 (4) (5)	—Repealed
	463, 464	—Bail
	467	—Jurisdiction
	475	—Re-election
	477	—Election
	492A	—Charge re capital murder
	514	—Release of exhibits
	515, 516	—Pleas

519 (2a)	—Effect of previous charge
524 (1a)	—Custody for observation
529 (3)	—Repealed
569	—Verdicts
583A, 584	—Right of appeal
586 (5)	—Suspension of execution
588	—Transcript of evidence
592 (5)	—New trial
597, 597A, 598	—Appeal to Supreme Court
604, 607	—Subpoena
608	—Warrant
637	—Recognizance
642A	—Recommendation of mercy
643 (2)	—Reprieve
656 (3)	—Commutation of sentence
659, 661	—Dangerous sexual offenders
660, 662-667	—Preventive detention
697	—Waiving jurisdiction
710 (5)	—Custody for observation
721	—Appeal Court
734	—Stated case
743	—Appeals to Court of Appeal

CRIMINAL CODE SECTIONS ADDED OR AMENDED IN 1961

2 (9) (k) (1)—Re-enacted as follows:

(k) in the Yukon Territory, the Court of Appeal and

(l) in the Northwest Territories, the Court of Appeal;

(3) (7)—Service of process:

(7) Where, pursuant to this Act, any summons, notice or other process is required to be or may be served upon a corporation, and no other method of service is provided, such service may be effected by delivering the process

(a) in the case of a municipal corporation, to the mayor, warden, reeve, or other chief officer of the corporation,

or to the secretary, treasurer or clerk of the corporation, and

- (b) in the case of any other corporation, to the manager, secretary or other executive officer of the corporation or of a branch thereof.

178 (1) (c)—All that portion immediately following subparagraph (ii) is re-enacted as follows:

during the actual progress of a race meeting conducted by the association upon races being run thereon and if, as to race meetings at which there are running races, the following provisions are complied with, namely, no association shall hold, and on any one track there shall not be held, except as hereinafter provided, more than fourteen days of racing during any such meeting to be held on consecutive days on which racing may be lawfully carried on and to consist of not more than eight races on any of those days;

178 (1) (d) (ii)—Re-enacted as follows:

- (ii) no more than ten races shall be held during any one calendar day; and

202A—Classification of murder:

202A (1) Murder is capital murder or non-capital murder.

(2) Murder is capital murder, in respect of any person where,

- (a) it is planned and deliberate on the part of such person,
- (b) it is within sec. 202 and such person,
 - (i) by his own act caused or assisted in causing the bodily harm from which the death ensued;
 - (ii) by his own act administered or assisted in administering the stupefying or over-powering thing from which the death ensued;
 - (iii) by his own act stopped or assisted in the stopping of the breath from which the death ensued;
 - (iv) himself used or had upon his person the weapon as a consequence of which the death ensued; or

- (v) counselled or procured another person to do any act mentioned in subparagraph (i), (ii) or (iii), or to use any weapon mentioned in subparagraph (iv), or
- (c) such person by his own act caused or assisted in causing the death of,
 - (i) a police officer, police constable, constable-sheriff, deputy sheriff, sheriff's officer or other person employed for the preservation and maintenance of the public peace, acting in the course of his duties, or
 - (ii) a warden, deputy warden, instructor, keeper, gaoler, guard or other officer or permanent employee of a prison, acting in the course of his duties, or counselled or procured another person to do any act causing or assisting in causing the death.

(3) All murder other than capital murder is non-capital murder.

206—Re-enacted as follows:

206. (1) Every one who commits capital murder is guilty of an indictable offence and shall be sentenced to death.

(2) Every one who commits non-capital murder is guilty of an indictable offence and shall be sentenced to imprisonment for life.

(3) Notwithstanding subsection (1), a person who appears to the court to have been under the age of eighteen years at the time he committed a capital murder shall not be sentenced to death upon conviction therefor but shall be sentenced to imprisonment for life.

(4) For the purposes of Part XX, the sentence of imprisonment for life prescribed by this section is a minimum punishment.

221 (4)—Dangerous driving.

(4) Every one who drives a motor vehicle on a street, road, highway or other public place in a manner that is dangerous to

the public, having regard to all the circumstances including the nature, condition and use of such place and the amount of traffic that at the time is or might reasonably be expected to be on such place, is guilty of

- (a) an indictable offence and is liable to imprisonment for two years, or
- (b) an offence punishable on summary conviction.

225 (1) (a)—All that portion of subs. (1) preceding para. (a) re-enacted as follows:

225. (1) Where an accused is convicted of an offence under secs. 192, 193 or 207 committed by means of a motor vehicle or of an offence under secs. 221, 222 or 223, the court, judge, justice or magistrate, as the case may be, may, in addition to any other punishment that may be imposed for that offence, make an order prohibiting him from driving a motor vehicle on the highway in Canada.

225 (3)—Re-enacted as follows:

(3) Every one who drives a motor vehicle in Canada while he is disqualified or prohibited from driving a motor vehicle by reason of

- (a) the legal suspension or cancellation, in any province, of his permit or licence to drive a motor vehicle in that province, or
- (b) an order made pursuant to subsection (1), is guilty of
- (c) an indictable offence and is liable to imprisonment for two years, or
- (d) an offence punishable on summary conviction.

226A. (1) Every one who navigates or operates a vessel or any water skis, surf board, water sled or other towed object on any of the waters or territorial waters of Canada, in a manner that is dangerous to navigation, life or limb, having regard to all the circumstances including the nature and conditions of such waters and the use that at the time is or might reasonably be expected to be made of such waters, is guilty of

- (a) an indictable offence and is liable to imprisonment for two years, or

(b) an offence punishable on summary conviction.

(2) Every one who navigates or operates a vessel while towing a person on any water skis, surf board, water sled or other object, when there is not on board such vessel another responsible person keeping watch on the person being towed, is guilty of an offence punishable on summary conviction.

(3) Every one who navigates or operates a vessel while towing a person on any water skis, surf board, water sled or other object during the period from one hour after sunset to sunrise is guilty of an offence punishable on summary conviction.

(4) Every one who, while his ability to navigate or operate a vessel is impaired by alcohol or a drug, navigates or operates a vessel is guilty of an offence punishable on summary conviction.

(5) Every one who, having the care, charge or control of a vessel that is involved in an accident with a person or another vessel in charge of a person, with intent to escape civil or criminal liability fails to stop his vessel, give his name and address and, where any person has been injured or appears to require assistance, offer assistance, is guilty of

(a) an indictable offence and is liable to imprisonment for two years, or

(b) an offence punishable on summary conviction.

(6) In proceedings under subsection (5), evidence that an accused failed to stop his vessel, offer assistance where any person has been injured or appears to require assistance and give his name and address is *prima facie* evidence of an intent to escape civil or criminal liability.

(7) Where an accused is convicted of an offence under secs. 192, 193, 207 or subsection (1), (2), (3), (4) or (5) of this section, committed by means of a vessel, the court, judge, justice or magistrate, as the case may be, may, in addition to any other punishment that may be imposed for that offence, make an order prohibiting him from navigating or operating a vessel on any of the waters or territorial waters of Canada,

(a) during any period that the court, judge, justice or magistrate considers proper, if he is liable to imprisonment for life in respect of that offence, or

- (b) during any period not exceeding three years, if he is not liable to imprisonment for life in respect of that offence.

(8) No order made under subsection (7) shall operate to prevent any person from acting as master, mate or engineer of a vessel that is required to carry officers holding certificates as master, mate or engineer.

(9) Every one who navigates or operates a vessel on any of the waters or territorial waters of Canada, while he is prohibited from navigating or operating a vessel by reason of an order made pursuant to subsection (7), is guilty of an offence punishable on summary conviction.

(10) Subsections (3) to (7) of section 224 apply *mutatis mutandis* to proceedings under this section.

273.—Re-enacted as follows:

273. (1) Every one commits theft who fraudulently, maliciously, or without colour of right,

- (a) abstracts, consumes or uses electricity or gas or causes it to be wasted or diverted; or
- (b) uses any telecommunication wire or cable or obtains any telecommunication service.

(2) In this section, “telecommunication” means any transmission, emission or reception of signs, signals, writing, images or sounds or intelligence of any nature by wire or cable.

304 (4)—Re-enacted as follows:

(4) Where, in proceedings under paragraph (a) of subsection (1), it is shown that anything was obtained by the accused by means of a cheque that, when presented for payment within a reasonable time, was dishonoured on the ground that no funds or insufficient funds were on deposit to the credit of the accused in the bank or other institution on which the cheque was drawn, it shall be presumed to have been obtained by a false pretence, unless the court is satisfied by evidence that when the accused issued the cheque he had reasonable grounds to believe that it would be honoured if presented for payment within a reasonable time after it was issued.

(5) In this section, "cheque" includes, in addition to its ordinary meaning, a bill of exchange drawn upon any institution that makes it a business practice to honour bills of exchange or any particular kind thereof drawn upon it by depositors.

307 (3)—"Cheque" defined:

(3) In this section, "cheque" includes, in addition to its ordinary meaning, a bill of exchange drawn upon any institution that makes it a business practice to honour bills of exchange or any particular kind thereof drawn upon it by depositors.

315—Re-enacted as follows:

315. (1) Every one who, with intent to injure or alarm any person, conveys or causes or procures to be conveyed by letter, telegram, telephone, cable, radio, or otherwise, information that he knows is false is guilty of an indictable offence and is liable to imprisonment for two years.

(2) Every one who, with intent to alarm or annoy any person, makes any indecent telephone call to such person is guilty of an offence punishable on summary conviction.

316 (1)—Re-enacted as follows:

316 (1) Every one commits an offence who by letter, telegram, telephone, cable, radio, or otherwise, knowingly utters, conveys or causes any person to receive a threat

- (a) to cause death or injury to any person, or
- (b) to burn, destroy or damage real or personal property, or
- (c) to kill, maim, wound, poison or injure an animal or bird that is the property of any person.

316 (3)—Re-enacted as follows:

(3) Every one who commits an offence under paragraph (b) or (c) of subsection (1) is guilty of

- (a) an indictable offence and is liable for imprisonment for two years, or
- (b) an offence punishable on summary conviction.

384 (2)—Re-enacted as follows:

(2) A land surveyor does not commit an offence under subsection (1) where, in his operations as a land surveyor

- (a) he takes up, when necessary, a boundary mark mentioned in paragraph (b) of subsection (1) and carefully replaces it as it was before he took it up, or
- (b) he takes up a boundary mark mentioned in paragraph (b) of subsection (1) in the course of surveying for a highway or other work that, when completed, will make it impossible or impracticable for such boundary mark to occupy its original position, and he establishes a permanent record of the original position sufficient to permit such position to be ascertained.

421 (3)—Re-enacted as follows:

(3) Where an accused is in custody and signifies in writing before a magistrate his intention to plead guilty to an offence with which he is charged that is alleged to have been committed in Canada outside the province in which he is in custody, he may, if the offence is not an offence mentioned in subsection (2) of sec. 413, and the Attorney General or Deputy Attorney General of the province where the offence is alleged to have been committed consents, be brought before a court or person that would have jurisdiction to try that offence if it had been committed in the province where the accused is in custody, and where he pleads guilty to that offence, the court or person shall convict the accused and impose the punishment warranted by law, but where he does not plead guilty, he shall be returned to custody and shall be dealt with according to law.

421A (1)—Re-enacted as follows:

421A. (1) Where an accused is in custody and signifies in writing before a magistrate his intention to plead guilty to an offence with which he is charged that is alleged to have been committed in the province in which he is in custody, he may, if the offence is not an offence mentioned in subsection (2) of sec. 413, be brought before a court or person that would have had jurisdiction to try that offence if it had been committed in

the place where the accused is in custody, and where he pleads guilty to that offence, the court or person shall convict the accused and impose the punishment warranted by law, but where he does not plead guilty, he shall be returned to custody and shall be dealt with according to law.

435—Re-enacted as follows:

435. A peace officer may arrest without warrant

- (a) a person who has committed an indictable offence or who, on reasonable and probable grounds, he believes has committed or is about to commit an indictable offence or is about to commit suicide, or
- (b) a person whom he finds committing a criminal offence.

441 (4) (5)—Repealed.

463 (1) (a)—Re-enacted as follows:

- (a) where an accused is charged with an offence other than an offence punishable by death, an offence under secs. 50 to 53, or non-capital murder, he may apply to a judge of a county or district court, or a magistrate as defined in sec. 466, who has jurisdiction in the territorial division in which the accused was committed for trial or is confined; and

464—Re-enacted as follows:

464. Notwithstanding anything in this Act, no court, judge, justice or magistrate, other than a judge of or a judge presiding in a superior court of criminal jurisdiction for the province in which an accused is charged with an offence punishable by death, an offence under secs. 50 to 53 or non-capital murder may admit that accused to bail before or after committal for trial.

467 (c) (vi) (a)—Enacted as follows:

- (vi) (a) subsection (3) of section 225.

475 (1)—Re-enacted as follows:

475. (1) Where an accused elects or is deemed to have elected to be tried by a court composed of a judge and jury, the accused may notify the sheriff in the territorial division in which he is to be tried that he desires to re-elect under this section.

475 (3)—Re-enacted as follows:

(3) The accused shall attend or, if he is in custody, shall be produced at the time and place fixed under subsection (2) and shall, after the charge upon which he has been committed for trial or ordered to stand trial has been read to him, be put to his election in the following words:

You have elected or are deemed to have elected
to be tried by a court composed of a judge and jury.
Do you now elect to be tried by a judge without a jury?

477 (b)—Re-enacted as follows:

(b) he was committed for trial or ordered to stand trial by a magistrate who, pursuant to sec. 469, continued the proceedings before him as a preliminary inquiry.

492A—Capital murder to be specifically charged:

492A. No person shall be convicted of capital murder unless in the indictment charging the offence he is specifically charged with capital murder.

514 (1)—Re-enacted as follows:

514. (1) A judge of a superior court of criminal jurisdiction or a court of criminal jurisdiction may, on summary application on behalf of the accused or the prosecutor after three days' notice to the accused or prosecutor, as the case may be, order the release of any exhibit for the purpose of a scientific or other test or examination, subject to such terms as appear to be necessary or desirable to ensure the safeguarding of the exhibit and its preservation for use at the trial.

515 (1), (2)—Re-enacted as follows:

515. (1) An accused who is not charged with an offence punishable by death and is called upon to plead may plead guilty or not guilty, or the special pleas authorized by this Part and no others.

(2) Where an accused who is not charged with an offence punishable by death refuses to plead or does not answer directly, the court shall order the clerk of the court to enter a plea of not guilty.

(2a) An accused who is charged with an offence punishable by death and is called upon to plead may plead not guilty, or the special pleas authorized by this Part and no others.

(2b) Where an accused who is charged with an offence, punishable by death does not plead not guilty or one of the special pleas authorized by this Part or does not answer directly the court shall order the clerk of the court to enter a plea of not guilty.

516 (4)—Re-enacted as follows:

516. (4) When the pleas referred to in subsection (3) are disposed of against the accused, he may plead guilty or not guilty, unless he is charged with an offence punishable by death, in which case the court shall order the clerk of the court to enter a plea of not guilty.

519 (2a)—Effect of previous charge:

519. (2a) A conviction or acquittal on an indictment for capital murder bars a subsequent indictment for the same homicide charging it as non-capital murder, and a conviction or acquittal on an indictment for non-capital murder bars a subsequent indictment for the same homicide charging it as capital murder.

524 (1a)—Custody for observation:

(1a) A court, judge or magistrate may, at any time before verdict or sentence, when of the opinion, supported by the evidence of a least one duly qualified medical practitioner, that there is reason to believe that

(a) an accused is mentally ill, or

(b) the balance of the mind of an accused is disturbed, where the accused is a female person charged with an offence arising out of the death of her newly-born child,

remand the accused, by order in writing, to such custody as the court, judge or magistrate directs for observation for a period not exceeding thirty days.

529 (3)—Repealed.

569 (1a)—Where capital murder charged and part only proved:

569. (1a) For greater certainty and without limiting the generality of subsection (1), where a count charges capital murder and the evidence does not prove capital murder, but proves non-capital murder, or an attempt to commit non-capital murder, the jury may find the accused not guilty of capital murder but guilty of non-capital murder or an attempt to commit non-capital murder, as the case may be.

569 (4)—Conviction for dangerous driving, etc., where criminal negligence or manslaughter charged:

(4) Where a count charges an offence under secs. 192, 193 or 207 arising out of the operation of a motor vehicle or the navigation or operation of a vessel, or an offence under subsection (1) of sec. 221, and the evidence does not prove such offence but does prove an offence under subsection (4) of sec. 221 or subsection (1) of sec. 226A, the accused may be convicted of an offence under subsection (4) of section 221 or subsection (1) of sec. 226A, as the case may be.

583A—Right of appeal of person sentenced to death:

583A. (1) Notwithstanding any other provision of this Act a person who has been sentenced to death may appeal to the court of appeal,

(a) against his conviction on any ground of appeal that involves a question of law or fact or mixed law and fact; and

(b) against his sentence unless that sentence is one fixed by law.

(2) A person who has been sentenced to death shall, notwithstanding he has not given notice pursuant to sec. 586, be deemed to have given such notice and to have appealed against his conviction and against his sentence unless that sentence is one fixed by law.

(3) The court of appeal, on an appeal pursuant to this section shall

(a) consider any ground of appeal alleged in the notice of appeal, if any notice has been given, and

- (b) consider the record to ascertain whether there are present any other grounds upon which the conviction ought to be set aside or the sentence varied, as the case may be.

584 (2)—Re-enacted as follows:

(2) For the purposes of this section a judgment or verdict of acquittal includes an acquittal in respect of an offence specifically charged where the accused has on the trial thereof been convicted of an included or other offence.

586 (5)—Suspension of execution of sentence of death:

586. (5) Where, pursuant to a conviction, a sentence of death has been imposed, the execution of the sentence shall be suspended until after the determination of the appeal pursuant to sec. 583A whether or not the production of a certificate mentioned in subsection (4) has been made, and where, as a result of such suspension, a new time is required to be fixed for the execution of the sentence, it may be fixed by the judge who imposed the sentence or any judge who might have held or sat in the same court.

588 (2)—Re-enacted as follows:

588. (2) A copy of transcript of

- (a) the evidence taken at the trial,
- (b) the charge to the jury, if any,
- (c) the reasons for judgment, if any, and
- (d) the addresses of the prosecutor and the accused or counsel for the accused by way of summing up, if
 - (i) a ground for the appeal is based upon either of the addresses, or
 - (ii) the appeal is pursuant to sec. 583A,

shall be furnished to the court of appeal, except in so far as it is dispensed with by order of a judge of that court.

588 (4)—Re-enacted as follows:

588. (4) A party to the appeal is entitled to receive

- (a) without charge, if the appeal is against a conviction in

respect of which a sentence of death has been imposed or against such sentence, or

- (b) upon payment of any charges that are fixed by rules of court, in any other case,

a copy or transcript of any material that is prepared under subsections (2) and (3).

592 (1) (d)—Re-enacted as follows:

- (d) may set aside a conviction and find the appellant not guilty on account of insanity and order the appellant to be kept in safe custody to await the pleasure of the Lieutenant-Governor where it is of the opinion that, although the appellant committed the act or made the omission charged against him he was insane at the time the act was committed or the omission was made, so that he was not criminally responsible for his conduct.

592 (5) (d)—Enacted as follows:

- (d) notwithstanding paragraph (a), if the conviction against which the accused appealed was for an offence mentioned in sec. 467 and was made by a magistrate, the new trial shall be held before a magistrate acting under Part XVI, other than the magistrate who tried the accused in the first instance, unless the court of appeal directs that the new trial be held before the magistrate who tried the accused in the first instance.

597 (1)—All that portion of subs. (1) preceding para. (a) re-enacted as follows:

597. (1) A person who is convicted of an indictable offence other than an offence punishable by death and whose conviction is affirmed by the court of appeal may appeal to the Supreme Court of Canada.

597 (2) (a)—Re-enacted as follows:

- (a) who is acquitted of an indictable offence other than an offence punishable by death and whose acquittal is set aside by the court of appeal, or

597A—Appeal on law or fact or mixed law and fact:

597A. Notwithstanding any other provision of this Act, a person

(a) who has been sentenced to death and whose conviction is affirmed by the court of appeal, or

(b) who is acquitted of an offence punishable by death and whose acquittal is set aside by the court of appeal,

may appeal to the Supreme Court of Canada on any ground of law or fact or mixed law and fact.

598 (1)—All that portion preceding paragraph (a), re-enacted as follows:

598.(1) Where a judgment of a court of appeal sets aside a conviction pursuant to an appeal taken under secs. 583 or 583A or dismisses an appeal taken pursuant to paragraph (a) of subsection (1) of sec. 584, the Attorney General may appeal to the Supreme Court of Canada.

604 (1)—Re-enacted as follows:

604. (1) Where a person is required to attend to give evidence before a superior court of criminal jurisdiction, a court of appeal, an appeal court or a court of criminal jurisdiction other than a magistrate acting under Part XVI, the subpoena directed to that person shall be issued out of the court before which the attendance of that person is required.

607 (1)—Re-enacted as follows:

607. (1) A subpoena that is issued out of a superior court of criminal jurisdiction, a court of appeal, an appeal court or a court of criminal jurisdiction other than a magistrate acting under Part XVI has effect anywhere in Canada according to its terms.

608 (1)—Re-enacted as follows:

608. (1) A warrant that is issued out of a superior court of criminal jurisdiction, a court of appeal, an appeal court or a court of criminal jurisdiction other than a magistrate acting under Part XVI may be executed anywhere in Canada.

637 (2)—Re-enacted as follows:

(2) A recognizance under this section may be in Form 28 and the provisions of subsections (2) and (3) of sec. 638 apply *mutatis mutandis* in respect of such recognizance.

642A—Recommendation by jury:

642A. Where a jury finds an accused guilty of an offence punishable by death, the judge who presides at the trial shall, before discharging the jury, put to them the following question:

You have found the accused guilty and the law requires that I now pronounce sentence of death against him (or "the law provides that he may be sentenced to death", as the case may be). Do you wish to make any recommendation as to whether or not he should be granted clemency? You are not required to make any recommendation but if you do make a recommendation either in favour of clemency or against it, your recommendation will be included in the report that I am required to make of this case to the Minister of Justice and will be given due consideration.

642A. (2) If the jury reports to the judge that it is unable to agree upon a recommendation, either in favour of clemency or against it and the judge is satisfied that further retention of the jury would not lead to agreement, he shall ascertain the number of jurors who are in favour of making a recommendation for clemency and the number of jurors who are against making such recommendation and shall include such information in the report required by subsection (1) of sec. 643.

643 (2)—Re-enacted as follows:

643. (2) Where a judge who sentences a person to death or any judge who might have held or sat in the same court considers

(a) that the person should be recommended for the royal mercy, or

(b) that, for any reason, it is necessary to delay the execution of the sentence,

the judge may, at any time, reprieve the person for any period that is necessary for the purpose.

656 (3)—Approval by Governor in Council of release after commutation of sentence:

656. (3) If the Governor in Council so directs in the instrument of commutation, a person in respect of whom a sentence of death is commuted to imprisonment for life or a term of imprisonment, shall, notwithstanding any other law or authority, not be released during his life or such term, as the case may be, without the prior approval of the Governor in Council.

Transitional:

17. (1) Where proceedings in respect of an offence that, under the provisions of the *Criminal Code* as it was before being amended by this Act, was punishable by death were commenced before the coming into force of this Act, the following rules apply, namely:

- (a) subject to paragraph (b), the offence shall be dealt with, inquired into, tried and determined, and any punishment in respect of that offence shall be imposed, as if this Act had not come into force;
- (b) where upon conviction for the offence a person is sentenced to death after the coming into force of this Act, the provisions of the *Criminal Code*, as amended by this Act, relating to appeals apply in respect of such conviction and sentence as if the offence had been committed after the coming into force of this Act; and
- (c) where a new trial of a person for the offence has been ordered by the court of appeal or the Supreme Court of Canada and the new trial is commenced after the coming into force of this Act, the new trial shall be commenced by the preferring of a new indictment before the court which the accused is to be tried, and thereafter the offence shall be dealt with, inquired into, tried and determined, and any punishment in respect of the offence shall be imposed, as if it had been committed after the coming into force of this Act.

(2) Where proceedings in respect of an offence that would, if it had been committed before the coming into force of this Act, have been punishable by death are commenced after the

coming into force of this Act, the offence shall be dealt with, inquired into, tried and determined, and any punishment in respect of the offence shall be imposed, as if it had been committed after the coming into force of this Act irrespective of when it was actually committed.

(3) For the purposes of this section, proceedings in respect of an offence shall be deemed to have commenced

- (a) upon the preferring of a bill of indictment before the grand jury of the court, in the case of a court constituted with a grand jury, and
- (b) upon the preferring of an indictment before the court, in any other case.

659 (b)—Re-enacted as follows:

- (b) “dangerous sexual offender” means a person who, by his conduct in any sexual matter, has shown a failure to control his sexual impulses, and who is likely to cause injury, pain or other evil to any person, through failure in the future to control his sexual impulses or is likely to commit a further sexual offence, and

660 (1)—All that portion of subs. (1) preceding para. (a), re-enacted as follows:

660. (1) Where an accused has been convicted of an indictable offence the court may, upon application, impose a sentence of preventive detention in lieu of any other sentence that might be imposed for the offence of which he was convicted or that was imposed for such offence, or in addition to any sentence that was imposed for such offence if the sentence has expired, if

660 (3)—Presence of accused:

(3) At the hearing of an application under subsection (1), the accused is entitled to be present.

661—The heading preceding sec. 661 and sec. 661, re-enacted as follows:

DANGEROUS SEXUAL OFFENDERS

661. (1) Where an accused has been convicted of

(a) an offence under

- (i) section 136,
- (ii) section 138,
- (iii) section 141,
- (iv) section 147,
- (v) section 148, or
- (vi) section 149; or

(b) an attempt to commit an offence under a provision mentioned in paragraph (a),

the court shall, upon application, hear evidence as to whether the accused is a dangerous sexual offender.

(2) On the hearing of an application under subsection (1), the court shall hear any relevant evidence, and shall hear the evidence of at least two psychiatrists, one of whom shall be nominated by the Attorney General.

(3) Where the court finds that the accused is a dangerous sexual offender it shall, notwithstanding anything in this Act or any other Act of the Parliament of Canada, impose upon the accused a sentence of preventive detention in lieu of any other sentence that might be imposed for the offence of which he was convicted or that was imposed for such offence, or in addition to any sentence that was imposed for such offence if the sentence has expired.

(4) At the hearing of an application under subsection (1), the accused is entitled to be present.

662 (1) (2)—Re-enacted as follows:

662. (1) The following provisions apply with respect to applications under this Part, namely,

(a) an application under subsection (1) of sec. 660 shall not be heard unless

- (i) the Attorney General of the province in which the accused is to be tried consents,

- (ii) seven clear days' notice has been given to the accused by the prosecutor, either before or after conviction or sentence but within three months after the passing of sentence and before the sentence has expired, specifying the previous convictions and the other circumstances, if any, upon which it is intended to found the application, and
 - (iii) a copy of the notice has been filed with the clerk of the court or the magistrate, as the case may be; and
- (b) an application under subsection (1) of sec. 661 shall not be heard unless seven clear days' notice thereof has been given to the accused by the prosecutor either before or after conviction or sentence but within three months after the passing of sentence and before the sentence has expired, and a copy of the notice has been filed with the clerk of the court or with the magistrate, where the magistrate is acting under Part XVI.

(2) An application under this Part shall be heard and determined by the court without a jury.

662 (4) (5)—Where application not heard before sentence; *prima facie* evidence:

(4) Where an application under subsection (1) of sec. 660 or subsection (1) of sec. 661 has not been heard before the accused is sentenced for the offence for which he has been convicted, the application shall not be heard by the judge or magistrate who sentenced the accused but may be heard by any other judge or magistrate who might have held or sat in the same court.

(5) The production of a document purporting to contain any nomination or consent that may be made or given by the Attorney General under this Part and to be signed by the Attorney General is *prima facie* evidence of such nomination or consent.

663—Re-enacted as follows:

663. Without prejudice to the right of the accused to tender evidence as to his character and repute, evidence of character and repute may, where the court thinks fit, be admitted on the question whether the accused is or is not persistently leading a criminal life or is or is not a dangerous sexual offender, as the case may be.

664—Repealed.

665 (1)—Repealed.

666—Re-enacted as follows:

666. Where a person is in custody under a sentence of preventive detention, the Minister of Justice shall, at least once in every year, review the condition, history and circumstances of that person for the purposes of determining whether he should be permitted to be at large on licence, and if so, on what conditions.

667 (1) (2)—Re-enacted as follows:

667. (1) A person who is sentenced to preventive detention under this Part may appeal to the court of appeal against that sentence on any ground of law or fact or mixed law and fact.

(2) The Attorney General may appeal to the court of appeal against the dismissal of an application for an order under this Part on any ground of law.

(2a) On an appeal against a sentence of preventive detention the court of appeal may

(a) quash such sentence and impose any sentence that might have been imposed in respect of the offence for which the appellant was convicted, or

(b) dismiss the appeal.

(2b) On an appeal against the dismissal of an application for an order under this Part the court of appeal may

(a) allow the appeal, set aside any sentence imposed in respect of the offence for which the respondent was

convicted and impose a sentence of preventive detention, or

(b) dismiss the appeal.

(2c) A judgment of the court of appeal imposing a sentence pursuant to this section has the same force and effect as if it were a sentence passed by the trial court.

697 (4) (5)—Re-enacted as follows:

(4) A summary conviction court before which proceedings under this Part are commenced may, at any time before the trial, waive jurisdiction over the proceedings.

(5) A waiver pursuant to subsection (4) may be to a particular summary conviction court or it may be, generally, to any summary conviction court having jurisdiction to try the accused.

710 (5)—Custody for observation:

(5) Notwithstanding subsection (1), the summary conviction court may, at any time before convicting a defendant or making an order against him or dismissing the information, as the case may be, when of the opinion, supported by the evidence of at least one duly qualified medical practitioner, that there is reason to believe that the defendant is mentally ill, remand the defendant, by order in writing, to such custody as the court directs for observation for a period not exceeding thirty days.

721 (1)—Repealed.

721 (2)—Re-enacted as follows:

(2) In the provinces of British Columbia, Alberta and Saskatchewan, an appeal under sec. 720 shall be heard at the sittings of the appeal court that is held nearest to the place where the cause of the proceedings arose, but the judge of the appeal court may, on the application of one of the parties, appoint a place for the hearing of the appeal.

734 (2) (a)—Re-enacted as follows:

(a) the application

- (i) shall be in writing and be directed to the summary conviction court,
- (ii) shall be served upon the summary conviction court by leaving with that court a copy thereof within thirty clear days after the time when the adjudication that is questioned was made;

734 (2) (c)—Re-enacted as follows:

- (c) the appellant shall, within fifteen clear days after receiving the stated case,
 - (i) give to the respondent a notice in writing of the appeal with a copy of the stated case, and
 - (ii) transmit the stated case to the superior court.

743 (2)—Re-enacted as follows:

(2) Secs. 581 to 595 apply *mutatis mutandis* to an appeal under this section.

This Act will come into force on proclamation.

APPENDIX G

FORMS

In this Appendix are reproduced some of the forms that are currently used in the Magistrates' Courts of The Municipality of Metropolitan Toronto which may or may not be of use to magistrates throughout the Province. Some of the forms have titles; some have not, but their subject-matter, in the latter case, makes it clear what the forms are. The forms are not reproduced to scale, but the actual size of each is set out at the top of each form.

As this Manual is going to press, the Uniformity of Court Procedure Committee of the Ontario Magistrates' Association is considering a wide range of forms used in Magistrates' Courts throughout the Province in the hope that they may make recommendations to the Association to adopt a complete set of uniform forms for universal use by all Ontario magistrates in their courts. It is to be hoped that this may be accomplished.

CRIMINAL CODE FORMS

[FRONT]

(Section 429)

(14" x 8½")

FORM 1

INFORMATION TO OBTAIN A SEARCH WARRANT

CANADA
PROVINCE OF ONTARIO
County of York
Municipality of
Metropolitan Toronto

THIS IS THE INFORMATION OF

in the said Municipality of Metropolitan Toronto

.....(Occupation), hereinafter called the informant, taken before me.

The informant says that

(Set out the things to be searched for)

are being sought as evidence with respect to the commission, the suspected commission or the intended commission of an offence against the Criminal Code, to wit:

and that he has reasonable grounds for believing that the said things or some part of them are in the.....

part of them are in the..... (dwelling house, etc.)

..... (Owner or occupant of premises)

..... (Address or location of premises)

in the said Municipality in the County of York,

And the said informant further says that his grounds for so believing are that

(State grounds for belief)

WHEREFORE the informant prays that a search warrant may be granted to search the said

.....
for the said things.

SWORN BEFORE ME this

day of

A.D. 19 .

at The Municipality of Metropolitan Toronto.

A Justice of the Peace in and for the County of York

Signature of Informant

[BACK]

INFORMATION
To Obtain a Search Warrant

RESPECTING

.....Street

Dated day of 19

[FRONT]
(14" x 8½")

(Sections 439 and 695)

FORM 2

CANADA,
PROVINCE OF ONTARIO
County of York,
Municipality of
Metropolitan Toronto

IN THE NAME OF HER MAJESTY THE QUEEN
THIS IS THE INFORMATION OF

of The Municipality of Metropolitan Toronto

..... (occupation), hereinafter called the informant.

The informant says that he has reasonable and probable grounds to believe and does believe that

on the day of in the year 19 at The Municipality of
Metropolitan Toronto, in the County of York, unlawfully did

contrary to the Criminal Code.

.....
Signature of Informant

SWORN BEFORE ME Accused appears in court on.....of.....19.....

this day of A.D. 19 Remanded to.....of.....19.....

at The Municipality of Metropolitan Toronto Remanded to.....of.....19.....

Remanded to.....of.....19.....

Remanded to.....of.....19.....

A Justice of the Peace in and for the
County of York

BAIL—Cash \$.....

Accused Elects to be tried by the Magistrate without a jury.

Property \$.....

Court Reporter.....

Clerk of the Court,.....

For the Crown,.....

For the Accused,.....

Accused pleads guilty

Accused found guilty

Remanded to

for sentence.

Accused Elects to be tried

by a judge without a jury

by a court composed of a judge and jury

SENTENCE—Accused

(a) fined \$.....plus \$.....costs
or.....

(b) committed to.....for

(c) placed on suspended sentence
(and probation) for.....

(d) other order or direction

Committed for Trial

BAIL set in the sum of \$.....

[BACK]

Date to appear in court first time

.....day.....19.....

INFORMATION

AGAINST

Dated day of 19

[FRONT]
(14" x 8½")

(Section 717)

FORM 2

INFORMATION BY THE PARTY THREATENED FOR SURETIES TO KEEP THE PEACE

IN THE NAME OF HER MAJESTY THE QUEEN
THIS IS THE INFORMATION OF

CANADA,
PROVINCE OF ONTARIO
County of York
Municipality of
Metropolitan Toronto

.....
.....
of The Municipality of Metropolitan Toronto, herein-
after called the informant.

taken this day of in the year 19 , before the undersigned,
a justice of the peace in and for the said County of York, who says that he has reason-
able and probable grounds to fear and does fear that hereinafter
called the accused, will cause personal injury to h (or)
on account of a threat made on the day of in the year 19
in the words or to the effect following, that is to say:—.....
.....
.....

and that on account of the above and other threats made by the accused ^{she} ~~he~~, the com-
plainant, is afraid that the accused will do ^{her} ~~him~~ some personal injury and therefore prays
that the accused may be required to find sufficient sureties to keep the peace and be
of good behaviour towards ^{her} ~~him~~ and the complainant also saith that ^{she} ~~he~~ does not make
this complaint against, nor require such sureties from the accused from any malice
or ill will, but merely for the preservation of ^{her} ~~his~~ person from injury and pursuant to the
Criminal Code, section 717.

SWORN before me

this day of A.D. 19
at The Municipality of Metropolitan Toronto.

Informant

A Justice of the Peace in and for the County
of York

Court Reporter.....

Clerk of the Court.....

For the Crown.....

For the Accused.....

[BACK]

.....day of.....19.....
Date of Appearance

INFORMATION
For Threatening
(Criminal Code, Sec. 717)
AGAINST

And For Sureties To Keep the Peace

Dated day of 19

[FRONT]
(7" x 8½")

(Section 429)

FORM 5

WARRANT TO SEARCH

CANADA,
PROVINCE OF ONTARIO
County of York
Municipality of
Metropolitan Toronto

To the Peace Officers in the said Municipality.
WHEREAS it appears on the oath of
.....
of The Municipality of Metropolitan Toronto

that there are reasonable grounds for believing that certain things, to wit:

which are being sought as evidence in respect to the commission, suspected commission
or intended commission of an offence against the Criminal Code, to wit:

are in the _____ of

at _____, hereinafter called the premises.

THIS IS THEREFORE to authorize and require you, between the hours of

to enter the said premises

and to search for the said things and to bring them before me or some other justice.

DATED this _____ day of
Metropolitan Toronto.

A.D. _____, at The Municipality of

MT 573

A Justice of the Peace in and for the County of York

[BACK]

Executed by.....

Dated _____ day of _____ 19____

WARRANT TO SEARCH
Against

[FRONT]
(7' x 8½')

(Sections 441 and 700)

FORM 6

SUMMONS TO A PERSON CHARGED WITH AN OFFENCE

CANADA,
PROVINCE OF ONTARIO } TO.....
County of York
Municipality of
Metropolitan Toronto }

WHEREAS you have been charged before me that you on
at The Municipality of Metropolitan Toronto, in the County of York, unlawfully did

contrary to

THESE ARE THEREFORE TO COMMAND YOU, in Her Majesty's name, to
appear before me on , at o'clock (Toronto time) in
the noon at the Magistrates' Court,
or before such other justice for the said County of York as shall then be there, to answer
to the said charge, and to be further dealt with according to law.

Given under my hand on
19 , }
A Justice of the Peace for the County of York

MT 556

[BACK]

ONTARIO
County of York
Municipality of
Metropolitan Toronto

I, _____, a police constable
of The Municipality of Metropolitan Toronto, make
oath and say that I did on _____ day, the _____ day
of _____ A.D. 19 _____, serve the accused,
the within named _____ with a true
copy of the within Summons by

(a) Delivering it to him personally.

Strike out
clause not
applicable

(b) Leaving it for him at his last or most usual place of abode with
an inmate thereof apparently not under sixteen years
of age, because such accused cannot conveniently be met with
and at the time of such service I exhibited to _____ the within
original Summons.

Sworn before me
this _____ day of _____, A.D. 19 _____,
at The Municipality of Metropolitan Toronto

A Justice of the Peace in and for the County
of York

P.C. No. Div.

SUMMONS

No.

Name

Address

.....

.....

(Constable serving summons enter particulars below)

Age

Where born

Occupation

Married or Single

No. Station

Return To:

METROPOLITAN TORONTO POLICE

149 College Street

TORONTO 2B, ONTARIO

[FRONT]
(7" x 8½")

(Sections 442, 444 and 707)

Form 7

**WARRANT TO ARREST A PERSON
CHARGED WITH AN OFFENCE**

CANADA,
County of York
Municipality of
Metropolitan Toronto

To the peace officers in the said Municipality of
Metropolitan Toronto.

WHEREAS _____ of The Municipality of Metropolitan Toronto,
hereinafter called the accused, has been charged that he, on the _____ day of _____
in the year 19_____, at The Municipality of Metropolitan Toronto, in the County of
York, unlawfully did _____
contrary to the Criminal Code.

THIS IS THEREFORE to command you, in Her Majesty's name, forthwith to
arrest the accused and to bring him before me or any justice for the said County of
York, to answer to the said charge, and to be dealt with according to law.

DATED this _____ day of _____ A.D. _____, at The Municipality of Metropolitan Toronto.

MT 523

A Justice of the Peace in and for the County of York

[BACK]

**WARRANT
TO ARREST**

Date Issued..... 19.....

Informant.....

Address.....

Telephone No.

WARRANT WHERE SUMMONS IS DISOBEYED OR CANNOT BE SERVED

CANADA,
PROVINCE OF ONTARIO }
County of York
Municipality of
Metropolitan Toronto }

To the peace officers in the said Municipality of
Metropolitan Toronto.

WHEREAS on the day of , A.D. 19 ,
of , hereinafter called the accused, was charged
that he on the day of , A.D. 19 , at The Municipality of
Metropolitan Toronto in the County of York, unlawfully did

AND WHEREAS a summons to the accused was issued commanding him, in Her
Majesty's name, to appear on the day of , A.D. 19 ,
at o'clock in the noon at the Magistrate's Court
before me or any justice who should then be there, to answer to the said charge and to
be dealt with according to law;

AND WHEREAS it appears that the said summons cannot be served upon the
accused.

THIS IS THEREFORE to command you, in Her Majesty's name, to forthwith
arrest the said accused and to bring him before me or any justice for the said County
of York, to answer to the said charge and to be dealt with according to law.

DATED this day of , A.D. 19 , at The
Municipality of Metropolitan Toronto.

.....
A Justice of the Peace in and for the County of York

(Section 604)

[FRONT]
(7" x 8½")
(IN DUPLICATE)

FORM 11

SUBPOENA TO A WITNESS

CANADA, PROVINCE OF ONTARIO County of York Municipality of Metropolitan Toronto	}	TO..... OF.....
---	---	--------------------

WHEREAS has been charged that he on the day
 of in the year 19, at The Municipality of Metropolitan
 Toronto, in the County of York, unlawfully did

and it has been made to appear that you are likely to give material evidence for the
 prosecution or the defence. THIS IS THEREFORE to command you to appear before
 the presiding justice, on day, the day of next, at
 o'clock in the noon, Toronto time, at the Magistrate's Court.....
 to give evidence concerning the said charge.

DATED this day of A.D., at The Municipality of Metro-
 politan Toronto.

MT 530

A Justice of the Peace in and for the County of York

[BACK]

ONTARIO County of York Municipality of Metropolitan Toronto	}	I,, a police constable of The Municipality of Metropolitan Toronto, make oath and say that I did on day, the day of A.D. 19, serve the within named witness with a true copy of the within Subpoena by
--	---	---

- (a) Delivering it to him personally.
- (b) Leaving it for him at his last or most usual place of abode with
 an inmate thereof apparently not under sixteen
 years of age, because such witness cannot conveniently be met with

Strike out
 clause not
 applicable

and at the time of such service I exhibited to the
 within original Subpoena.

Sworn before me this day of, A.D. 19, at The Municipality of Metropolitan Toronto	} P.C. No..... Div.....
---	---	--------------------------------

A Justice of the Peace in and for the County of York

WARRANT FOR WITNESS IN THE MAGISTRATES' COURT FOR THE MUNICIPALITY OF METROPOLITAN TORONTO

CANADA,
PROVINCE OF ONTARIO
County of York
Municipality of
Metropolitan Toronto

To the peace officers in the said Municipality of
Metropolitan Toronto.

NAME OF WITNESS.....

WHEREAS has been charged that he
on the day of , A.D. 19 , at The Municipality of Metro-
politan Toronto in the County of York, unlawfully did

AND WHEREAS it has been made to appear that
hereinafter called the witness, is likely to give material evidence for (the prosecution)
(the defence) and that*

THIS IS THEREFORE TO COMMAND YOU, in Her Majesty's name, to bring
the witness before this Court as soon as can be, to give evidence concerning the said
charge.

DATED this day of , A.D. 19 , at The
Municipality of Metropolitan Toronto.

.....
(A Justice) or (Clerk of the Court)

*Insert whichever of the following is appropriate:

- (a) the said ... (witness) ... will not attend in response to a subpoena if a subpoena is issued.
- (b) the said ... (witness) ... is evading service of a subpoena.
- (c) the said ... (witness) ... was duly served with a subpoena and has neglected (to attend at the time and place appointed therein) or (to remain in attendance).
- (d) the said ... (witness) ... was bound by a recognizance to attend and give evidence and has neglected (to attend) or (to remain in attendance).

[FRONT]
(7" x 8½")

(Sections 451 and 710)

FORM 14

WARRANT REMANDING A PRISONER

CANADA,
PROVINCE OF ONTARIO
County of York
Municipality of
Metropolitan Toronto

To the peace officers in the said Municipality of
Metropolitan Toronto, and the keeper of the common
gaol at Toronto, in the said county.

You are hereby commanded forthwith to convey to the said common gaol at Toronto
the person this day charged and remanded as in the following schedule set forth:—

Remarks	Person Charged	Offence	Remanded to
.....
.....

And I hereby command you, the keeper of the said prison, to receive the said prisoner
into your custody in the prison and keep h safely until the day when h remand
expires and then to have h before any justice at the Magistrate's Court
at the hour of o'clock, in the noon of the said day, there to answer
to the charge and to be dealt with according to law, unless you are otherwise ordered
before that time.

DATED this day of A.D. , at The Municipality of
Metropolitan Toronto.

MT 554A

A Justice of the Peace in and for the County of York

[BACK]

No.	Name	Offence	day of	19
.....	.....	.....	day of	19
.....	.....	.....	day of	19
.....	.....	.....	day of	19

[FRONT]
(14" x 8½")

(Section 460)

FORM 17

WARRANT OF COMMITTAL FOR TRIAL

CANADA,
PROVINCE OF ONTARIO
County of York
Municipality of
Metropolitan Toronto

} To the peace officers in the said municipality and to
the keeper of the common gaol of the county aforesaid
at Toronto, in the said county.

WHEREAS _____, hereinafter called the accused
stands charged that he on the _____ day of _____ A.D. 19 _____, at
The Municipality of Metropolitan Toronto in the County of York, unlawfully did

AND WHEREAS on a preliminary inquiry into that charge the accused
 Strike out having elected to be tried by a court composed of a judge and jury
 sections not having elected to be tried by a judge without a jury
 applicable not having elected
 was this day committed for trial;

THIS IS THEREFORE TO COMMAND YOU, in Her Majesty's name, to take the
accused and convey him safely to the common gaol at Toronto and there deliver him
to the keeper thereof, with the following precept:

I DO HEREBY COMMAND YOU THE SAID KEEPER to receive the accused
into your custody in the said prison and keep him safely there until he is delivered by
due course of law.

DATED this _____ day of _____ A.D. 19 _____ at
The Municipality of Metropolitan Toronto.

[BACK]

**WARRANT OF COMMITTAL
FOR TRIAL AGAINST**

Dated	day of	19
-------	--------	----

[FRONT]
(14" x 8½")

(Sections 482 and 713)

FORM 18

CANADA,
PROVINCE OF ONTARIO
County of York
Municipality of
Metropolitan Toronto

**Warrant of Committal Upon Conviction
Imposing Imprisonment (Gaol)**

To the peace officers in the said municipality and to
the keeper of the common gaol of the county aforesaid
at Toronto, in the said county.

WHEREAS

hereinafter called the accused, was this day convicted upon a charge that he, the
accused, on the day of in the year 19 , at The
Municipality of Metropolitan Toronto, in the County of York, unlawfully did

contrary to

And it was adjudged that the accused for his offence should be imprisoned in the
common gaol at Toronto for the term of

YOU ARE HEREBY COMMANDED, in Her Majesty's name, to take the accused
and convey him safely to the common gaol at Toronto, and deliver him to the keeper
thereof, together with the following precept:

You, the said keeper, are hereby commanded to receive the accused into custody in
the said prison and imprison him there for the term of

And for so doing, this is a sufficient warrant.

DATED this day of A.D. , at The Municipality of
Metropolitan Toronto.

[BACK]

WARRANT OF COMMITTAL
AGAINST

Dated

day of

19

[FRONT]
(14" x 8½")

(Sections 482 and 713)

FORM 18

WARRANT OF COMMITTAL

**Upon A Conviction Imposing Imprisonment And A Penalty In
The First Instance To Run Consecutively**

CANADA,
POVINCE OF ONTARIO
County of York
Municipality of
Metropolitan Toronto

} To the peace officers in the said municipality and to
the keeper of the common gaol of the county aforesaid
at Toronto, in the said county.

WHEREAS

hereinafter called the accused, was this day convicted upon the charge that he, the
accused, on the day of A.D. 19, at The
Municipality of Metropolitan Toronto, in the County of York, unlawfully did

contrary to the Criminal Code, Section

AND IT WAS ADJUDGED that the accused for his offence be imprisoned in the
common gaol at Toronto for the term of

AND IN ADDITION it was further adjudged that the accused for his offence forfeit
and pay the sum of dollars to be applied according to law, and
also pay

AND IN DEFAULT OF PAYMENT of the said sums forthwith, be imprisoned in the
common gaol at Toronto for the term of
unless the said sums and costs and charges of the committal and of conveying the
accused to the said common gaol are sooner paid:

YOU ARE HEREBY COMMANDED, in Her Majesty's name, to take the accused
and convey him safely to the common gaol at Toronto and deliver him to the keeper
thereof, together with the following precept:

YOU, THE SAID KEEPER, are hereby commanded to receive the accused into
custody in the said common gaol and imprison him there for the term of

AND FOR SO DOING this is a sufficient warrant.

DATED this day of
Metropolitan Toronto.

A.D. 19, at The Municipality of

[BACK]

WARRANT OF COMMITTAL
AGAINST

Dated

day of

19

FORM 19 (Section 713)

(14" x 8½")

(Non-payment of a fine, etc.)

WARRANT OF COMMITTAL UPON AN ORDER FOR THE PAYMENT OF MONEY

CANADA,
PROVINCE OF ONTARIO
County of York
Municipality of
Metropolitan Toronto

To the peace officers in the said province and to the
keeper of the common gaol of the county aforesaid,
at Toronto, in the said county.

WHEREAS hereinafter called the defendant
was tried upon an information alleging that at The Municipality of Metropolitan
Toronto, in the County of York, on the _____ day of _____ 19____,
unlawfully did

And it was ordered that the defendant for his offence pay the sum of _____ dollars,
to be applied according to law together with Court costs of _____ dollars and
in default the defendant be imprisoned in the common gaol at Toronto for the term
of _____ Days.

I HEREBY COMMAND YOU in Her Majesty's name, to take the defendant and
convey him safely to the common gaol at Toronto and deliver him to the keeper thereof,
together with the following precept:

I HEREBY COMMAND, you the keeper of the said common gaol to receive the
defendant into custody in the said common gaol and imprison him there for the term
of _____ Days unless the said amounts and the costs and charges of the
committal and of conveying the defendant to the said common gaol are sooner paid,
and for so doing this is a sufficient warrant.

DATED at The Municipality of Metropolitan Toronto
on.....

Magistrate in and for the Province of Ontario

Date of Conviction..... Summons No.....

Against:

Fine \$.....

Court Costs

Issue of Warrant .50

Execution of Warrant 1.50

\$ _____

Conveyance

Total \$ _____

[FRONT]
(14" x 8½")

(Sections 637 and 717)

FORM 20

**WARRANT OF COMMITTAL FOR FAILURE TO
FURNISH RECOGNIZANCE TO KEEP THE PEACE**

CANADA,
PROVINCE OF ONTARIO
County of York
Municipality of
Metropolitan Toronto

} To the peace officers in the said municipality and to
the keeper of the common gaol of the county aforesaid
at Toronto, in the said county.

WHEREAS

hereinafter called the accused, has been ordered to enter into a recognizance to keep the peace and be of good behaviour, and has refused or failed to enter into a recognizance accordingly;

YOU ARE HEREBY COMMANDED, in Her Majesty's name, to take the accused and convey him safely to the common gaol at Toronto, and deliver him to the keeper thereof, together with the following precept:

YOU, THE SAID KEEPER, ARE HEREBY COMMANDED to receive the accused into your custody in the said prison and imprison him there until he enters into a recognizance as aforesaid or until he is discharged in due course of law.

And for so doing, this is a sufficient warrant.

DATED this day of
of Metropolitan Toronto.

A.D. 19 , at The Municipality

A Magistrate

[BACK]

WARRANT FOR COMMITTAL

for failure to furnish
Recognizance to Keep the Peace

Against

.....

Dated	day of	19	.
-------	--------	----	---

(7' x 8½')

(Sections 429 (2), 447 and 713)

FORM 25

ENDORSEMENT OF A WARRANT

CANADA,
PROVINCE OF ONTARIO
County of York
Municipality of
Metropolitan Toronto

Pursuant to application this day made to me, I hereby authorize the execution of this warrant within the said Municipality of Metropolitan Toronto.

DATED this day of A.D. , at Toronto aforesaid.

A Justice of the Peace in and for the County of York.

[FRONT]
(14" x 8½")

(Sections 451, 669, 670, 710, 463)

FORM 28

RECOGNIZANCE OF BAIL
TAKEN BY A JUSTICE OF THE PEACE

CANADA,
PROVINCE OF ONTARIO }
County of York
Municipality of
Metropolitan Toronto }

BE IT REMEMBERED that on this day, the persons named in the following schedule personally came before me and severally acknowledged themselves to owe to Her Majesty the Queen the several amounts set opposite their respective names, namely:

<u>NAME</u>	<u>ADDRESS</u>	<u>OCCUPATION</u>	<u>AMOUNT</u>
(Accused)			
(Surety)			
(Surety)			
(Surety)			
(Surety)			
(Surety)			
(Surety)			
(Surety)			

to be made and levied of their several goods and chattels, lands and tenements respectively, to the use of Her Majesty, the Queen, if the said accused fails in the conditions hereunder written.

Taken and acknowledged before me on the day of
A.D. 19 , at The Municipality of Metropolitan Toronto.

A Justice of the Peace for the County of York

WHEREAS the above-named accused has been charged that
he on the day of A.D. 19
at The Municipality of Metropolitan Toronto, unlawfully did

NOW, THEREFORE, the condition of the above written recognizance is that if the accused personally appears before the Magistrates' Court,
on the day of next, at the hour of o'clock in the noon, to answer to the charge and to be dealt with according to law, the said recognizance is void, otherwise it stands in full force and virtue.

[BACK]

THE CRIMINAL CODE PROVIDES THAT

669. **RECOGNIZANCE BINDING.** Where a person is bound by recognizance to appear before a court, justice or magistrate for any purpose and the session or sittings of that court or the proceedings are adjourned or an order is made changing the place of trial, that person and his sureties continue to be bound by the recognizance in like manner as if it had been entered into with relation to the resumed proceedings or the trial at the time and place at which the proceedings are ordered to be resumed or the trial is ordered to be held.

670. (1) **RESPONSIBILITY OF SURETIES.** Where an accused is bound by recognizance to appear for trial, his arraignment or conviction does not discharge the recognizance, but it continues to bind him and his sureties, if any, for his appearance until he is discharged or sentenced, as the case may be.

(2) **COMMITTAL OR NEW SURETIES.** Notwithstanding subsection (1), the court, justice or magistrate may commit an accused to prison or may require him to furnish new or additional sureties for his appearance until he is discharged or sentenced, as the case may be.

EFFECT OF COMMITTAL. The sureties of an accused who is bound by recognizance to appear for trial are discharged if he is committed to prison pursuant to subsection (2).

This recognizance has been read over to me and explained and I fully understand the same.

Signature of Accused

Signature of Bondsman

Recognizance of Bail

(Taken By A Justice Of The Peace)

(Section 676)

CERTIFICATION OF DEFAULT

I hereby certify that

has not appeared as required by this recognizance and that by reason thereof the ends of justice have been defeated or delayed,

as the case may be.

The reason for the default is

The Names and Addresses of the principals and sureties are as follows:

Dated day of 19

Dated this day of in the year 19

Judge, Magistrate, or Justice of the Peace.

In case of cash bail, signature of person depositing cash.

RECEIVED 19 from the

MAGISTRATES' COURT CLERK the sum of

\$ Dollars

Bondsman

[FRONT]
(14" x 8½")

(Sections 451, 463, 669, 670)

FORM 28

RECOGNIZANCE OF BAIL
TAKEN BY A JUSTICE OF THE PEACE

CANADA,	}	Regina vs
PROVINCE OF ONTARIO		
County of York		
Municipality of Metropolitan Toronto		

BE IT REMEMBERED that on this day, the persons named in the following schedule personally came before me and severally acknowledged themselves to owe to Her Majesty, the Queen, the several amounts set opposite their respective names, namely:

NAMEADDRESSOCCUPATIONAMOUNT.....
(Accused).....
(Surety).....
(Surety).....
(Surety).....
(Surety).....
(Surety).....
(Surety)

to be made and levied of their several goods and chattels, lands and tenements, respectively, to the use of Her Majesty the Queen, if the said accused fails in the conditions hereunder written.

Taken and acknowledged before me on the day of
A.D. 19 , at The Municipality of Metropolitan Toronto.

(Front Continued)

Conditions

Judge Without Jury

WHEREAS the said
hereinafter called the accused, was committed to stand trial before a judge
acting under PART XVI, on a charge that: he on the day of
A.D. 19 , at The Municipality of Metropolitan Toronto, in the
County of York, unlawfully did

NOW, THEREFORE, the condition of the above written recognizance is that
if the accused appears before the presiding judge at the time and place fixed for
his trial, and there surrenders himself (herself) and takes his (her) trial on the
indictment that is found against him (her) and does not depart the said court
without leave, the said recognizance is void, otherwise it stands in full force and
virtue.

Judge and Jury

WHEREAS the said hereinafter called the accused,
was committed for trial before.....on a
(Court of General Sessions of the Peace, Supreme Court of Ontario)
charge that: he on the day of A.D. 19 ,
at The Municipality of Metropolitan Toronto, in the County of York, unlawfully
did

NOW, THEREFORE, the condition of the above written recognizance is that
the accused appears at that court, *or* if, having re-elected under Part XVI, he
appears before the presiding judge at the time and place fixed for his (her) trial
and takes his (her) trial on the indictment that is found against him (her) and
does not depart the said court without leave, the said recognizance is void,
otherwise it stands in full force and virtue.

Strike out section not applicable
"B" Section
"C" Section

[BACK]

THE CRIMINAL CODE PROVIDES THAT

669. **RECOGNIZANCE BINDING.** Where a person is bound by recognizance to appear before a court, justice or magistrate for any purpose and the session or sittings of that court or the proceedings are adjourned or an order is made changing the place of trial, that person and his sureties continue to be bound by the recognizance in like manner as if it had been entered into with relation to the resumed proceedings or the trial at the time and place at which the proceedings are ordered to be resumed or the trial is ordered to be held.

670. (1) **RESPONSIBILITY OF SURETIES.** Where an accused is bound by recognizance to appear for trial, his arraignment or conviction does not discharge the recognizance, but it continues to bind him and his sureties, if any, for his appearance until he is discharged or sentenced, as the case may be.

(2) **COMMITTAL OR NEW SURETIES.** Notwithstanding subsection (1), the court, justice or magistrate may commit an accused to prison or may require him to furnish new or additional sureties for his appearance until he is discharged or sentenced, as the case may be.

(3) **EFFECT OF COMMITTAL.** The sureties of an accused who is bound by recognizance to appear for trial are discharged if he is committed to prison pursuant to subsection (2).

This recognizance has been read over to me and explained and I fully understand the same.

Signature of Accused

Signature of Bondsman

Recognizance of Bail

(Taken By A Justice Of The Peace)

(Section 676)

CERTIFICATE OF DEFAULT

FORM 29

I hereby certify that.....

has not appeared as required by this recognizance and that by reason thereof the ends of justice have been

(Defeated or delayed as the case may be)

The reason for the default is.....

The Names and Addresses of the principals and sureties are as follows:

Dated day of 19

Dated this day of in the year 19

Clerk of the Court, Judge, Justice or Magistrate

In case of cash bail, signature of person depositing cash.

RECEIVED.....19.....from the
MAGISTRATES' COURT CLERK the sum of

Dollars

\$

Bondsman

(14" x 8½")

(Sections 428 and 713)

FORM 31 C.C.

CONVICTION

CANADA,
PROVINCE OF ONTARIO }
County of York
Municipality of
Metropolitan Toronto }

BE IT REMEMBERED that on the day of A.D. 19
at The Municipality of Metropolitan Toronto,
hereinafter called the accused, was tried under Part XVI or XXIV of the Criminal Code
upon the charge that he, on the day of A.D. 19 ,
at The Municipality of Metropolitan Toronto, in the County of York, unlawfully did

contrary to the Criminal Code, was convicted of the said offence and the following
punishment was imposed, namely

THAT THE SAID ACCUSED be imprisoned in
at
for the term of

DATED this day of A.D. 19
at The Municipality of Metropolitan Toronto.

A Magistrate

ORDER AGAINST A DEFENDANTCANADA,
PROVINCE OF ONTARIOCOUNTY OF YORK
CITY OF TORONTOIN THE MATTER OF The Excise Tax Act, Chapter 100, R.S.C. 1952 and amendments;
andIN THE MATTER OF The Criminal Code, Statutes of Canada, 2-3 Elizabeth II, Chapter 51,
Section 623; and

IN THE MATTER OF a judgment of the Magistrates' Courts against

BE IT REMEMBERED THAT on the day of , in the year
19 , at the City of Toronto aforesaid,, was tried upon an Information
alleging that:I, , Civil Servant, for and on behalf of the Minister
of National Revenue and duly authorized in writing to that effect, saith that:On the day of , in the year 19 ,
at The Municipality of Metropolitan Toronto in the County of York,did unlawfully being liable to pay sales tax imposed by Part VI of the Excise
Tax Act, 1952, R.S.C. Chapter 100, and amendments thereto, fail to pay
sales tax to the amount of

properly payable, contrary to Section 53 (1) of said Act.

AND IT WAS ORDERED AND ADJUDGED THAT:

.....
A Magistrate in and for the Province of Ontario

ORDER AGAINST A DEFENDANT

.....
Civil Servant, on behalf of
Minister of National Revenue.

PLAINTIFF

.....
DEFENDANT

(Section 482)

(5½" x 8½")

FORM 33

ORDER ACQUITTING ACCUSED

CANADA,
PROVINCE OF ONTARIO }
County of York
City of Toronto

Be it remembered that on the _____ day of _____ 19____, _____ (accused) was tried upon the charge, that on the _____ day of _____ in the year 19____, at the City of Toronto, in the County of York, unlawfully did

Contrary to the
and was found not guilty of the said offence.

Dated this _____ day of _____ 19____, at Toronto.

.....
Magistrates' Court Clerk.

[FRONT]

(7" x 8½")

(Sections 461, 463 and 724)

FORM 35

ORDER FOR DISCHARGE OF A PERSON IN CUSTODY

CANADA,
PROVINCE OF ONTARIO }
County of York
CITY OF TORONTO

To the keeper of the common gaol at the City of Toronto, in the County of York.

I hereby direct you to release.....
detained by you under a.....dated the.....
day of.....A.D....., if the said.....
is detained by you for no other cause.

.....
A Magistrate

[BACK]

DATE

FROM CUSTODY

Name

DISCHARGE OF

**OTHER FORMS USED IN CONNECTION WITH
CRIMINAL CODE OFFENCES**

(4' x 6')

**MUNICIPALITY OF METROPOLITAN TORONTO
MAGISTRATES' COURTS**

DEFENDANT.

A summons, issued at your request will be served on the Defendant to appear in Court
at _____ on _____ 19 __,
at _____ in., in Court Room

You must also attend the Court at that time.

MT 537

Magistrates' Court Clerk.

(14" x 8½")

(Criminal Code Section 171)

APPLICATION FOR WARRANT TO SEARCH — DISORDERLY HOUSE

TO: — Esquire,

SIR:

I report to you that there are reasonable grounds for believing and that I do believe that a house, room or place within The Municipality of Metropolitan Toronto, occupied by situate and known as number in the said Municipality, is kept or used as a Disorderly House as defined by Section 168 of the Criminal Code, that is to say a common house.

Pursuant to Section 171 of the Criminal Code, I hereby apply to you for a Warrant to Search authorizing me to enter and search such house, room or place with such other constables or peace officers as are deemed requisite by me.

Dated this day of A.D. 19, at The Municipality of Metropolitan Toronto.

.....
A Constable for The Municipality of Metropolitan Toronto

[PERFORATION]

(Criminal Code Section 171)

WARRANT TO SEARCH — DISORDERLY HOUSE

CANADA,
PROVINCE OF ONTARIO }
County of York
Municipality of
Metropolitan Toronto }

Pursuant to Section 171 of the Criminal Code, I hereby authorize you a constable of The Municipality of Metropolitan Toronto, by day or night and with such other constables as are deemed requisite by you, to enter and search the house, room or place within The Municipality of Metropolitan Toronto, occupied by situate and known as number and to seize anything found therein that may be evidence that an offence under Section of the Criminal Code is being committed at that place, to wit:

AND I FURTHER AUTHORIZE YOU to take into custody all the persons who are found in or at that place.

AND I FURTHER REQUIRE that those persons and things be brought before me or another justice for the said Municipality to be dealt with according to law.

DATED this day of A.D. 19, at The Municipality of Metropolitan Toronto.

(Section 171)

The Municipality of Metropolitan Toronto
MAGISTRATES' COURT

REGINA VS.....

Dated.....19.....

WHEREAS the articles and money listed below were seized by virtue of an order in writing issued by.....
a Justice of the Peace in and for the County of York, under the provisions of Section 171 of the Criminal Code, to search.....Street,
in the said City.

AND WHEREAS at the time of the search and seizure.....
(name of accused)

.....was found in the said place and the
said articles, money and person brought before a justice and the said person
..... was
(name of accused)

Score out
section that
does not
apply

convicted of an offence under section 176-177-179-182 of the Criminal Code,
on the.....day of.....19.....

AND WHEREAS no person has shown sufficient cause why the said articles and money should not be forfeited or destroyed and such articles and money are no longer required as evidence in any proceedings instituted pursuant to this seizure.

(1) I hereby order that.....

be forfeit to the Crown.

(2) that the following articles be destroyed.....

Magistrate

(14" x 8½")

(Section 446)

**In the Magistrate's Court
of The Municipality of Metropolitan Toronto**

His Worship {the.....day
Magistrate..... { of.....19.....

THE QUEEN Vs.....

Upon the application of the Crown Attorney for the City of Toronto and the County of York, I do hereby order the.....
of the.....at.....
in the County of.....in the Province of Ontario,
to forthwith deliver.....
a prisoner confined in the said.....
to.....a peace officer,
in and for The Municipality of Metropolitan Toronto.

And I do further order the said peace officer to forthwith convey the said.....
to The Municipality of Metropolitan Toronto in the County of York and there produce him and have him:

- (A) before a
within and for the
to answer to a certain offence charged against him, to wit,
- (B) before a
within and for the
to give evidence in this cause.
- (C)

And thereafter forthwith to reconvey the said.....
in sure and safe custody to the.....
at.....and there redeliver him to the
said....., unless this court make further order to the contrary.

Dated

A.D. 19 ..

CERTIFICATE OF A PREVIOUS CONVICTION

CANADA,
PROVINCE OF ONTARIO }
County of York } To Wit:
Municipality of }
Metropolitan Toronto }

I, _____ of The Municipality of Metropolitan Toronto in the County of York, a Justice of the Peace and Clerk of the Magistrates' Court for The Municipality of Metropolitan Toronto, do hereby certify that I have the custody of the records of the said Magistrates' Court and of the original conviction hereinafter mentioned, and that hereinafter called the accused, on the _____ day of _____ A.D. 19____, at the said Municipality in the said County, was convicted before _____ Esquire, a Magistrate for the Province of Ontario, for that the accused on the day of _____ A.D. 19____, at The Municipality of Metropolitan Toronto, in the County of York, unlawfully did _____

and it was thereby adjudged by the said Magistrate that the accused for such offence should be _____

And I further certify that the said adjudication still remains in full force and that the same has not been quashed, reversed, modified or amended.

Dated this _____ day of _____ A.D. 19____, at
The Municipality of Metropolitan Toronto.

Clerk of the Magistrates' Court
for The Municipality of Metropolitan Toronto

[FRONT]
(7' x 8½')

(Section 672 (1) C.C.C.)

APPLICATION BY SURETY FOR RELIEF

CANADA,
PROVINCE OF ONTARIO
County of York,
Municipality of
Metropolitan Toronto.

.....
(surety)
For.....
(accused)

I, a surety for the above named
..... who is bound by recognizance to appear in Magistrates'
Court on the day of 19, hereby
apply to be relieved of my obligation under the said recognizance.

DATED at The Municipality of Metropolitan Toronto this day of,
19

.....
Signature of Surety.

[BACK]

Application By Surety
For Relief 672 (1)

Surety

Accused

Court Date

Dated..... of 19.....

[FRONT]
(7" x 8½")

(Section 672 (3) C.C.C.)

CERTIFICATE OF SHERIFF

CANADA,
PROVINCE OF ONTARIO
County of York,
City of Toronto.

I HEREBY CERTIFY that.....
has this day been committed to prison under an order made by.....,
Esquire, a Justice of the Peace in and for the City of Toronto on the.....day of
....., 19.....

DATED at Toronto this.....day of.....19.....

.....
Sheriff of the County of York.

[BACK]

Certificate of Sheriff

.....
Accused

.....
Date of Commital

.....
Station

.....
P.C.

[FRONT]
(7' x 8½')

(Section 672 (1) C.C.C.)

WARRANT TO ARREST BY SURETY

CANADA,
PROVINCE OF ONTARIO
County of York,
Municipality of
Metropolitan Toronto.

To.....a surety
and to all Peace Officers in the said City of Toronto
and to the Keeper of the Common Gaol in the said
City of Toronto.

WHEREAS....., a surety for.....
bound by a recognizance, dated at the City of Toronto to appear in Magistrates' Court
....., in the said City on the.....day of.....
in the year 19....., has applied to me, in writing, to be relieved of his obligation under
the said recognizance.

THIS IS THEREFORE to authorize you.....
and all peace officers of the said City of Toronto to arrest the said.....
and deliver him, with this order, to the said keeper.

AND YOU, the said keeper, are hereby commanded to receive the said.....
into your custody, in the said prison and there imprison him until he, the said.....
is discharged according to law.

DATED at The Municipality of Metropolitan Toronto, this.....day of.....,
19.....

A Justice of the Peace in and for the Province of Ontario.

[BACK]

Warrant to Arrest by Surety
Sec. 672 (1)

Accused

Court Date

Dated.....of.....19.....

Executed by:

P.C.....No.....

Station.....

(11" x 8½")

Municipality of Metropolitan Toronto Magistrates' Courts

MAGISTRATE'S ORDER FOR RECOGNIZANCE

Magistrate.....Court.....Date.....

To the Probation Officer:

Name.....Occupation.....

Address.....

Was convicted of.....

and was this date placed on Suspended Sentence and Probation for a Period of.....

.....with a bond of \$.....

Police Officer.....Division No.....

Please prepare the recognizance with terms indicated below:

-
Magistrate
- (x) Keep the Peace.
 - (x) Report as directed.
 - (x) Will not leave the country.
 - (x) Advise change of address.
 - (x) Advise change or loss of employment.
 - () Support family.
 - () Curfew time.....
 - () Restitution to:

<u>Name</u>	<u>Address</u>	<u>Amount</u>
.....
.....
.....

- In payments of \$.....per.....
- () Will not enter premises of.....
 - ()
 - ()

(8½" x 5½")

Municipality of Metropolitan Toronto Magistrates' Courts

MAGISTRATE'S ORDER FOR PRE-SENTENCE REPORT

Magistrate.....Court.....

Date.....

To: The Supervising Probation Officer:

Name.....Age.....

Address

Was this day convicted of:

.....

.....

and remanded (on bail)
(in custody) to.....19.....

Associated with.....

Police Officer.....Division No.....

Defence Counsel.....

Please prepare a Pre-sentence Report.

.....
Magistrate

(PLEASE COMPLETE IN DUPLICATE)

FOR PROBATION OFFICE USE ONLY

Investigator.....Stenographer.....

[FRONT]
(14" x 8½")

RECOGNIZANCE FOR SUSPENDED SENTENCE

CANADA,
PROVINCE OF ONTARIO }
County of York,
Municipality of
Metropolitan Toronto }

Be it remembered that on this day the persons named in the following schedule personally came before me and severally acknowledged themselves to owe to HER MAJESTY THE QUEEN, the several amounts set opposite their respective names, namely,

NAME	ADDRESS	OCCUPATION	AMOUNT
.....
.....

to be made and levied of their several goods and chattels and tenements, respectively, to the use of HER MAJESTY THE QUEEN, if the said fails in the condition here underwritten.

Taken and acknowledged before me on the day of
A.D., at the City of Toronto.

.....
A Magistrate in and for the Province of Ontario

The condition of the above written recognizance is that if
the person or persons aggrieved or injured appears and receives judgment when called upon during
the term of and commencing on
and during that term keeps the peace and is of good behaviour, and

1. Makes restitution or reparation in cash to
the person or persons aggrieved or injured by the offence for which he was
convicted, in the sum of \$ for the actual damage or loss
thereby caused, within months from this date at \$
per
2. Provides for the support of his wife and children and other dependent or dependents for which he is liable.
3. Reports at least once a month to a Probation Officer of the County of York, and in addition thereto as often as he may from time to time be required to report.
4. Will not leave the city or town where he resides, without permission from the Court and will notify the Probation Officer promptly of any change or contemplated change of address.
5. Will be home every evening not later than P.M. unless accompanied by a parent or guardian or holding the written permission of the Probation Officer.
6. Will not enter the premises of or any premises where liquor is sold or dispensed.
7. Will totally abstain from the use of intoxicating liquor.
- 8.

.....
Accused

.....
Surety

.....
Witness

the said recognizance is void, otherwise it stands in full force and virtue.

N.B.: Attention is drawn to the provisions of Sections 669 and 670 (1), (2) and (3) of the Criminal Code, which are endorsed on this Recognizance.

[BACK]

Be it remembered further that on the _____ day of _____ in the year 19____, the within named _____ appeared before me, the undersigned, a Magistrate in and for the Province of Ontario, upon the application of _____ Probation Officer, I did, according to the provisions of Section 638 S.S. 2 (b) of the Criminal Code, extend the Recognizance for Suspended Sentence and the period of probation for an additional _____ months, and added the further condition:

Taken and acknowledged the day and year first above mentioned at

.....
Accused

.....
A Magistrate in and for the Province of Ontario

.....
Surety

Be it remembered further that on the _____ day of _____ in the year 19____. Upon the application of _____ Probation Officer, I, the undersigned, a Magistrate in and for the Province of Ontario, did this day discharge the Recognizance for Suspended sentence and Probation Order contained herein and the within named _____ is released from the bond forthwith under the provisions of Section 638 S.S. 2 (b) of the Criminal Code.

.....
A Magistrate in and for the Province of Ontario

Section 669:

Where a person is bound by recognizance to appear before a court, justice or magistrate for any purpose and the session or sittings of that court or the proceedings are adjourned or an order is made changing the place of trial, that person and his sureties continue to be bound by the recognizance in like manner as if it had been entered into with relation to the resumed proceedings or the trial at the time and place at which the proceedings are ordered to be resumed or the trial is ordered to be held.

Section 670:

(1) Where an accused is bound by recognizance to appear for trial, his arraignment or conviction does not discharge the recognizance, but it continues to bind him and his sureties, if any, for his appearance until he is discharged or sentenced, as the case may be.

(2) Notwithstanding subsection (1), the court, justice or magistrate may commit an accused to prison or may require him to furnish new or additional sureties for his appearance until he is discharged or sentenced, as the case may be.

(3) The sureties of an accused who is bound by recognizance to appear for trial are discharged if he is committed to prison pursuant to section (2).

[FRONT]
(7' x 8½')

(Section 717)

SUMMONS TO A PERSON TO FURNISH SURETIES TO KEEP THE PEACE

CANADA,
PROVINCE OF ONTARIO
County of York,
Municipality of
Metropolitan Toronto

TO.....
.....
.....

WHEREAS an information upon oath has this day been laid before the undersigned, a justice of the peace in and for the said County of York that you, on the day of in the year 19 , at The Municipality of Metropolitan Toronto in the County of York, unlawfully did threaten
the informant, in the words following, that is to say:—

and that on account of the above threat made by you, the informant is afraid that you will do h some personal injury, and therefore prays that you may be required to find sufficient sureties to keep the peace and be of good behaviour towards h , pursuant to the Criminal Code, section 717.

THIS IS THEREFORE TO COMMAND YOU, in Her Majesty's name, to appear before me on , at o'clock (Toronto time) in the noon at the Magistrates' Court, or before such other justice for the said County of York as shall then be there, to answer to the premises, and to be further dealt with according to law, and to show cause why you should not furnish sureties aforesaid.

DATED this day of , A.D. 19 , at The Municipality of Metropolitan Toronto.

[BACK]

ONTARIO
County of York
Municipality of
Metropolitan Toronto

I, _____, a police constable
of The Municipality of Metropolitan Toronto, make
oath and say that I did on _____ day, the _____ day
of _____ A.D. 19 _____, serve the accused, the
within named _____ with a true copy
of the within Summons by

(a) Delivering it to him personally.

Strike out
clause not
applicable

(b) Leaving it for him at his last or most usual place of abode with an
inmate thereof apparently not under sixteen years of age, because such
accused cannot conveniently be met with

and at the time of such service I exhibited to _____ the within original
Summons.

Sworn before me
this _____ day of _____, A.D. 19 _____
at The Municipality of Metropolitan Toronto

A Justice of the Peace in and for the County of York

P.C. No. Div.

SUMMONS

No.

Name.....

Address.....

.....

(Constable serving summons enter
particulars below.)

Age.....

Where born.....

Occupation.....

Married or Single.....

No. Station

Return To:

METROPOLITAN TORONTO POLICE
149 College Street
TORONTO 2B, ONTARIO

[FRONT]

(14" x 8½")

CANADA,
PROVINCE OF ONTARIO

County of York,

Municipality of

Metropolitan Toronto

To Wit:

IN THE MATTER OF

I,
Metropolitan Toronto, in the County of York,
Do solemnly declare that

of The Municipality of

And I make this solemn declaration conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath and by virtue of the CANADA EVIDENCE ACT.

Declared before me at The Municipality of
Metropolitan Toronto, in the County of York,
this day of 19 .

MT 568

A Commissioner, etc.

[BACK]

Statutory Declaration (The Canada Evidence Act)

In the matter of

[FRONT]
(14" x 8½")

RECOGNIZANCE OF BAIL

Taken By A Justice Of The Peace

CANADA,	}	Regina vs
County of York,		
Municipality of		
Metropolitan Toronto		Material Witness

BE IT REMEMBERED that on this day, the persons named in the following schedule personally came before me and severally acknowledged themselves to owe to Her Majesty the Queen the several amounts set opposite their respective names, namely:

NAME	ADDRESS	OCCUPATION	AMOUNT
------	---------	------------	--------

.....
(Material Witness)

.....
(Surety)

.....
(Surety)

.....
(Surety)

.....
(Surety)

.....
(Surety)

to be made and levied of their several goods and chattels, lands and tenements respectively, to the use of Her Majesty the Queen, if the said witness fails in the conditions hereunder written.

Taken and acknowledged before me on the day of
A.D. 19 , at The Municipality of Metropolitan Toronto.

A Justice of the Peace for the County of York

WHEREAS one hereinafter called the accused,
has been charged that he on the day of A.D. 19
at The Municipality of Metropolitan Toronto, in the County of York, unlawfully did

NOW, THEREFORE, the condition of the above written recognizance is that if the said.....appears at the time and place fixed for the trial of the said accused to give evidence upon the charge against the said accused, the said recognizance is void, otherwise it stands in full force and virtue.

[BACK]

THE CRIMINAL CODE PROVIDES THAT

669. **RECOGNIZANCE BINDING.** Where a person is bound by recognizance to appear before a court, justice or magistrate for any purpose and the session or sittings of that court or the proceedings are adjourned or an order is made changing the place of trial, that person and his sureties continue to be bound by the recognizance in like manner as if it had been entered into with relation to the resumed proceedings or the trial at the time and place at which the proceedings are ordered to be resumed or the trial is ordered to be held.

(Signature of Material Witness)

Signature of Bondsman()

Recognizance of Bail

(Taken By A Justice Of The Peace)

(The Material Witness)

(The Accused)

Dated A.D. 19

(Section 676)

CERTIFICATE OF DEFAULT

I hereby certify that.....

has not appeared as required by this recognizance and that by reason thereof the ends of justice have been defeated or delayed.

as the case may be.

The reason for the default is.....

The Names and Addresses of the principals and sureties are as follows:

Dated this day of in the year 19

Judge, Magistrate, or Justice of the Peace.

In case of cash bail, signature of person depositing cash.

RECEIVED.....19.....from the

MAGISTRATES' COURT CLERK the sum of

Dollars

\$.....

(Bondsman)

(14" x 8½")

BAIL ORDER

IN THE MAGISTRATES' COURT
MUNICIPALITY OF METROPOLITAN TORONTO

Dated.....19.....,

MAGISTRATE.....

THE QUEEN VS.....
CHARGE.....

Upon application made this date by.....on behalf of the
accused named above, the Crown being represented by.....
Crown Attorney for The Municipality of Metropolitan Toronto.

It is ordered that the said accused be admitted to bail on entering into a recognizance
with one or more sureties in the sum of.....

And it is further ordered that such recognizance be entered into before a Justice
of the Peace.

JUDGE WITHOUT JURY ☐

JUDGE AND JURY ☐

.....
Magistrate

(14" x 8½")

AFFIDAVIT OF JUSTIFICATION BY A SURETY

PROVINCE OF ONTARIO }

County of York,
Municipality of
Metropolitan Toronto }The Queen against.....
(name of prisoner)

I,
of The Municipality of Metropolitan Toronto, in the County of York, make oath and say:

1. That I freely and voluntarily offer myself as surety in the sum of \$.....
for bail for.....who is now a prisoner in custody
charged with.....

2. That I reside at.....
and I am by occupation a.....
and employed by.....

3. That I am of the full age of twenty-one years.

4. That I am not bail or surety for any other person.

5. That I am in no way associated with the said prisoner in committing or attempt-
ing to commit the offence with which he is charged.

6. That I am not awaiting trial for any criminal offence.

7. That I am the sole owner in my right and in my own name of real property to
the amount and value of.....dollars over and above all mortgages, liens,
(amount of bail)
charges, encumbrances upon it or against it, and over and above what will pay all my
debts and other liabilities.

8. That my said real property consists of the following:

(List real property by lot and plan or street number)

9. That I have not, nor has any person on my behalf directly or indirectly obtained,
received, accepted or agreed to receive or accept or been paid or promised any money,
gift, loan, remuneration, or reward or any indemnity, compensation, or guarantee or any
other consideration whatsoever for this bail or for my becoming or agreeing to become
a surety for bail in this matter.

10. That I know that if the said prisoner does not appear in accordance with the
condition of the recognizance that I am entering into on his behalf, I will be called
upon to pay the amount of the bail I am becoming surety for, and failing being able to
pay that amount that my goods, chattels and real property will be sold and if the amount
of the bail cannot be realized out of such sale that I will be imprisoned.

11. That I know that if the said prisoner does not appear at the proper time and
place and the bail is forfeited, I shall not be entitled to any return of the bail money
or to any further consideration even if the prisoner is subsequently arrested.

12. That this affidavit and the recognizance have both been read over to me and
explained and I fully understand the same.

Sworn before me at The Municipality of
Metropolitan Toronto, in the County of York
this day of 19 }

A Justice of the Peace in and for the County of York }

(ATTACH THIS AFFIDAVIT TO RECOGNIZANCE)

ASSORTED FORMS UNDER PROVINCIAL STATUTES

[FRONT]
(14" x 8½")

THE LIQUOR CONTROL ACT
(ONTARIO)
(Intoxicated in Public Place)

P.C.
Dist. Div.

PROVINCE OF ONTARIO }
County of York
Municipality of
Metropolitan Toronto

THE INFORMATION OF

TO WIT:

.....
occupation

of The Municipality of Metropolitan Toronto, in the County of York,
who says

(1) THAT he believes upon reasonable and probable grounds that

hereinafter called the accused, on the day of A.D. 19 ,
was in an intoxicated condition in a public place, to wit, in in the
said municipality, at about m., in contravention of The Liquor Control
Act (Ontario).

(2) AND FURTHER, THAT the accused was previously, to wit, on the day
of , A.D. 19 at the said municipality, before
Esquire, a Magistrate in and for the Province of Ontario,
duly convicted of having, on the day of , A.D. 19 ,
at the said municipality, been in an intoxicated condition in a public place, to wit,
in in contravention of The Liquor Control Act (Ontario).

(3) AND FURTHER, THAT the accused was previously, to wit, on the day
of , A.D. 19 at the said municipality, before
Esquire, a Magistrate in and for the Province of Ontario,
duly convicted of having, on the day of , A.D. 19 ,
at the said municipality, been in an intoxicated condition in a public place, to wit,
in in contravention of The Liquor Control Act (Ontario).

(4) AND THAT the offence hereinbefore firstly charged against the accused is his
offence against the said Act.

Sworn before me this day of A.D. 19 , at The
Municipality of Metropolitan Toronto in the
County of York.

.....
Informant

A Justice of the Peace in and for the County of York

(Front Continued)

The accused pleads guilty.

Fined \$ and costs or
day(s)/month(s) in the common gaol at
Toronto, at hard labour.

— or —

The accused answers that he was
previously convicted.Committed to the common gaol at
Toronto for day(s)/month(s) at
hard labour......
A Magistrate in and for the Province of Ontario

[BACK]

No.....

Date to appear first time in Court

19.....

THE LIQUOR CONTROL ACT
(ONTARIO)(Intoxicated in Public Place)
INFORMATION

Against

Dated day of 19

P.C.....No.....

District.....Div.....

[FRONT]
(14" x 8½")

THE LIQUOR CONTROL ACT
(ONTARIO)

P.C.....

Dist.....Div.....

PROVINCE OF ONTARIO }
County of York }
Municipality of }
Metropolitan Toronto }
TO WIT: }

THE INFORMATION OF

.....
occupation

of The Municipality of Metropolitan Toronto, in the County of York,
who says

(1) THAT he believes upon reasonable and probable grounds that

This must be
date of laying
information.

hereinafter called the accused, within three months ending on the day
of A.D. 19 at The Municipality of Metro-
politan Toronto, in the said county, unlawfully did

(Three months
is maximum
period within
which charge
may be laid.
Shorter period
may be used.)

in contravention of The Liquor Control Act (Ontario).

(2) AND FURTHER THAT the accused was previously, to wit, on the day
of A.D. 19 at The Municipality of Metro-
politan Toronto, in the said county, before , Esquire, a
Magistrate in and for the Province of Ontario, duly convicted for that within
three months ending on the day of A.D. 19 ,
at the said municipality, he unlawfully did

in contravention of The Liquor Control Act (Ontario).

(3) AND THAT the offence hereinbefore firstly charged against the accused is
his second offence against the said Act.

Sworn before me, the day and year
and at the place first mentioned
above.

A Justice of the Peace in and for the County of York

.....
Informant

For the Crown, Mr.

For the Accused, Mr.

Court Clerk, Mr.

Court Reporter, Mr.

BAIL—Cash \$.....Property \$.....

.....
A Magistrate in and for the Province of Ontario

[BACK]

No.....

Date to appear first time in Court

.....19.....

**B. L. C. A.
Information****Against**

Dated	day of	19
-------	--------	----

P. C. No.

District Div.

Form MT 514

[FRONT]
(7" x 8½")

(Sections 109, 112)

In the matter of THE LIQUOR CONTROL ACT (ONTARIO)

WARRANT TO SEARCH PREMISES FOR LIQUOR

PROVINCE OF ONTARIO }
County of York }
Municipality of }
Metropolitan Toronto }

To all or any of the constables or police officers in
The Municipality of Metropolitan Toronto.

WHEREAS it appears on the oath of
of The Municipality of Metropolitan Toronto, in the County of York, police constable,
taken before me, that he suspects that liquor is unlawfully kept or had or kept or had
for unlawful purposes in the building or premises known as:

.....
in the said Municipality of Metropolitan Toronto, contrary to The Liquor Control
Act (Ontario). THIS IS THEREFORE to authorize and empower you, the said
constables and police officers in The Municipality of Metropolitan Toronto, to enter
and search the building or premises above mentioned and every part thereof; and for
that purpose to break upon any door, lock or fastening of the building or premises, or
any part thereof, or any closet, cupboard, box or other receptacle therein which might
contain liquor, and to bring the same before me or some magistrate in and for the
Province of Ontario, to be dealt with according to law. And you are hereby authorized
to execute this search warrant at any time, including Sunday or other holiday, and by
day or night.

DATED this day of A.D. 19 .

A Justice of the Peace in and for the County of York

MT 577

[BACK]

S.W. No.

THE LIQUOR CONTROL ACT
(ONTARIO)

**WARRANT TO SEARCH PREMISES
FOR LIQUOR**

Against

Dated day of 19

Executed by

P.C.

[FRONT]
(14" x 8½")

WARRANT OF COMMITTAL
THE LIQUOR CONTROL ACT (ONTARIO)
INTOXICATED IN PUBLIC PLACE

PROVINCE OF ONTARIO
County of York
Municipality of
Metropolitan Toronto

To the peace officers in the said Province and to the keeper of the common gaol of the county aforesaid at Toronto in the said county.

WHEREAS

hereinafter called the accused, was this day convicted upon a charge that he the accused, on the day of A.D. 19 , was in an intoxicated condition in a public place, to wit, in in the said Municipality, in contravention of The Liquor Control Act (Ontario).

And it was adjudged that the accused for the offence hereinbefore mentioned should

FORFEIT AND PAY

FORFEIT AND PAY dollars to be applied according to
law and also pay the sum of dollars in respect of costs,
and in default of payment of the said sums forthwith be imprisoned in the common gaol
at Toronto for the term of
unless the said sums and costs and charges of the committal and of conveying the
accused to the said gaol are sooner paid.

YOU ARE HEREBY COMMANDED, in Her Majesty's name, to take the accused and to convey him safely to the common gaol at Toronto and deliver him to the keeper thereof, together with this precept:

YOU, THE KEEPER OF THE SAID COMMON GAOL, ARE HEREBY COMMANDED to receive the accused into custody in the said common gaol and imprison him there for the term of _____ unless the said sums and costs and charges of the committal and conveying the accused to the said common gaol are sooner paid.

AND FOR SO DOING this shall be your sufficient warrant.

DATED this day of
Municipality of Metropolitan Toronto.

A.D. 19 , at The

[BACK]

No.....

Warrant of Committal

under

**THE LIQUOR CONTROL ACT
(ONTARIO)**

(Intoxicated in Public Place)

Against

.....

Fine \$

Costs \$

Commitment \$

Conveyance \$

Total, \$

Dated day of 19

ORDER OF DETENTION

THE LIQUOR CONTROL ACT (ONTARIO)
INTOXICATED IN PUBLIC PLACE

PROVINCE OF ONTARIO County of York Municipality of Metropolitan Toronto	} To the peace officers in the said Province and to the Superintendent of an Institution of the said Province for the reclamation of alcoholics that is designated for the purpose by the Lieutenant Governor in Council.
--	--

hereinafter called the accused, was this day convicted upon a charge that he the accused, on the day of A.D. 19 , was in an intoxicated condition in a public place, to wit, in in the said Municipality, in contravention of subsection (2) of Section 80 of The Liquor Control Act (Ontario):

AND WHEREAS he has contravened ss. (2) of Sec. 80 at least twice during the twelve months preceding the date of the commission of the offence hereinbefore mentioned, it was ordered that the accused for the said offence shall be detained for thirty days in an Ontario Institution so designated by the Lieutenant Governor in Council for the reclamation of alcoholics;

AND WHEREAS he has consented thereto, it was ordered that the accused for the offence hereinbefore mentioned shall be detained for ninety days in an Ontario Institution designated by the Lieutenant Governor in Council for the reclamation of alcoholics:

YOU, THE SAID SUPERINTENDENT, ARE HEREBY COMMANDED to receive the accused and to detain him in the said Institution for the term hereinbefore mentioned AND FOR SO DOING this shall be your sufficient warrant.

Magistrate

I hereby consent to this order for detention for ninety days.

.....
(Witness)

NOTE: Sec. 106 (7) (c) provides that where an accused is ordered to be detained **for a term of ninety days . . .** "the Superintendent of the Institution may release him at any time during such term if the Superintendent is of the opinion that further detention will not benefit him."

[FRONT]
(14" x 8½")

RECOGNIZANCE OF BAIL

TAKEN BY AN OFFICER IN CHARGE OF A POLICE STATION
(INTOXICATED IN PUBLIC PLACE ONLY)

CANADA,
PROVINCE OF ONTARIO }
County of York
Municipality of
Metropolitan Toronto }

BE IT REMEMBERED that on this day, the persons named in the following schedule personally came before me and severally acknowledged themselves to owe to Her Majesty the Queen the several amounts set opposite their respective names, namely:

<u>NAME</u>	<u>ADDRESS</u>	<u>OCCUPATION</u>	<u>AMOUNT</u>
(Accused)			
(Surety)			
(Surety)			
(Surety)			
(Surety)			
(Surety)			
(Surety)			
(Surety)			

to be made and levied of their several goods and chattels, lands and tenements respectively, to the use of Her Majesty the Queen, if the said accused fails in the conditions hereunder written.

Taken and acknowledged before me on the day of
A.D. 19 , at The Municipality of Metropolitan Toronto.

.....
Officer in charge of number Police Station

WHEREAS the above-named accused has been charged
that he on the day of A.D. 19 ,
at The Municipality of Metropolitan Toronto, unlawfully did

CONTRAVENE THE LIQUOR CONTROL ACT (ONTARIO)
To Wit: INTOXICATED IN PUBLIC PLACE

NOW, THEREFORE, the condition of the above written recognizance is that if the accused personally appears before the Magistrates' Court, at number 4 Police Station, 30 Regent St., Toronto, on the day of at the hour of nine o'clock in the forenoon, to answer to the charge and to be dealt with according to law, the said recognizance is void, otherwise it stands in full force and virtue.

[BACK]

THE CRIMINAL CODE PROVIDES THAT

669. **RECOGNIZANCE BINDING.** Where a person is bound by recognizance to appear before a court, justice or magistrate for any purpose and the session or sittings of that court or the proceedings are adjourned or an order is made changing the place of trial, that person and his sureties continue to be bound by the recognizance in like manner as if it had been entered into with relation to the resumed proceedings or the trial at the time and place at which the proceedings are ordered to be resumed or the trial is ordered to be held.

670. (1) **RESPONSIBILITY OF SURETIES.** Where an accused is bound by recognizance to appear for trial, his arraignment or conviction does not discharge the recognizance, but it continues to bind him and his sureties, if any, for his appearance until he is discharged or sentenced, as the case may be.

(2) **COMMITTAL OR NEW SURETIES.** Notwithstanding subsection (1), the court, justice or magistrate may commit an accused to prison or may require him to furnish new or additional sureties for his appearance until he is discharged or sentenced, as the case may be.

EFFECT OF COMMITTAL. The sureties of an accused who is bound by recognizance to appear for trial are discharged if he is committed to prison pursuant to subsection (2).

This recognizance has been read over to me and explained and I fully understand the same.

Signature of Accused

Signature of Bondsman

Recognition of Bail

Taken By An Officer In Charge
Of A Police Station

(Section 676)

CERTIFICATE OF DEFAULT

I hereby certify that

has not appeared as required by this recognition and that by reason thereof the ends of justice have been defeated or delayed, as the case may be.

The reason for the default is

The Names and Addresses of the principals and sureties are as follows:

Dated day of 19

Dated this day of in the year 19

Judge, Magistrate, or Justice of the Peace.

In case of cash bail, signature of person depositing cash.

RECEIVED 19 from the

MAGISTRATES' COURT CLERK the sum of

Dollars

.....

Bondsman

[FRONT]
(14" x 8½")

RECOGNIZANCE OF BAIL

TAKEN BY A JUSTICE OF THE PEACE FOR OFFENCES UNDER
THE LIQUOR CONTROL ACT, NAMELY,
INTOXICATED IN PUBLIC PLACE

CANADA,
PROVINCE OF ONTARIO }
County of York
Municipality of
Metropolitan Toronto }

BE IT REMEMBERED that on this day, the persons named in the following schedule personally came before me and severally acknowledged themselves to owe to Her Majesty the Queen the several amounts set opposite their respective names, namely:

<u>NAME</u>	<u>ADDRESS</u>	<u>OCCUPATION</u>	<u>AMOUNT</u>
(Accused)			
(Surety)			
(Surety)			
(Surety)			
(Surety)			
(Surety)			
(Surety)			
(Surety)			

to be made and levied of their several goods and chattels, lands and tenements respectively, to the use of Her Majesty the Queen, if the said accused fails in the conditions hereunder written.

Taken and acknowledged before me on the day of
A.D. 19 , at The Municipality of Metropolitan Toronto.

A Justice of the Peace for the County of York

WHEREAS the above-named accused has been charged
that he on the day of A.D. 19 ,
at The Municipality of Metropolitan Toronto, unlawfully did

CONTRAVENE THE LIQUOR CONTROL ACT (ONTARIO)
To Wit: INTOXICATED IN PUBLIC PLACE

NOW, THEREFORE, the condition of the above written recognizance is that if the accused personally appears before the Magistrates' Court, at number 4 Police Station, 30 Regent St., Toronto, on the day of at the hour of nine o'clock in the forenoon, to answer to the charge and to be dealt with according to law, the said recognizance is void, otherwise it stands in full force and virtue.

[BACK]

THE CRIMINAL CODE PROVIDES THAT

669. **RECOGNIZANCE BINDING.** Where a person is bound by recognizance to appear before a court, justice or magistrate for any purpose and the session or sittings of that court or the proceedings are adjourned or an order is made changing the place of trial, that person and his sureties continue to be bound by the recognizance in like manner as if it had been entered into with relation to the resumed proceedings or the trial at the time and place at which the proceedings are ordered to be resumed or the trial is ordered to be held.

670. (1) **RESPONSIBILITY OF SURETIES.** Where an accused is bound by recognizance to appear for trial, his arraignment or conviction does not discharge the recognizance, but it continues to bind him and his sureties, if any, for his appearance until he is discharged or sentenced, as the case may be.

(2) **COMMITTAL OR NEW SURETIES.** Notwithstanding subsection (1), the court, justice or magistrate may commit an accused to prison or may require him to furnish new or additional sureties for his appearance until he is discharged or sentenced, as the case may be.

EFFECT OF COMMITTAL. The sureties of an accused who is bound by recognizance to appear for trial are discharged if he is committed to prison pursuant to subsection (2).

This recognizance has been read over to me and explained and I fully understand the same.

Signature of Accused

Signature of Bondsman

Recognizance of Bail

(Taken By A Justice Of The Peace)

(Section 676)

CERTIFICATE OF DEFAULT

I hereby certify that.....

has not appeared as required by this recognizance and that by reason thereof the ends of justice have been defeated or delayed,

as the case may be.

The reason for the default is.....

The Names and Addresses of the principals and sureties are as follows:

Dated day of 19

Dated this day of in the year 19

Judge, Magistrate, or Justice of the Peace.

In case of cash bail, signature of person depositing cash

RECEIVED..... 19..... from the

MAGISTRATES' COURT CLERK the sum of

\$..... Dollars

Bondsman

[FRONT]
(14" x 8½")

DRIVING CARELESSLY

P.C.....

Dist.....Div.....

CANADA,
PROVINCE OF ONTARIO
County of York,
Municipality of
Metropolitan Toronto

IN THE NAME OF HER MAJESTY THE QUEEN
THIS IS THE INFORMATION OF

.....
.....
.....
of The Municipality of Metropolitan Toronto

.....(occupation), hereinafter called the informant.

The informant says that he has reasonable and probable grounds to believe and does believe that

on the day of in the year 19 at The Municipality of
Metropolitan Toronto, in the County of York, unlawfully did commit the offence of
driving carelessly a vehicle bearing number plates for the year 19 on a
highway within the said Municipality at about m., contrary to The Highway
Traffic Act.

SWORN BEFORE ME

this day of A.D. 19
at The Municipality of Metropolitan Toronto

.....
Signature of Informant

.....
A Justice of the Peace in and for the
County of York

Accused appears in court on.....of.....19....

Remanded to.....of.....19....

BAIL - Cash \$.....

Remanded to.....of.....19....

Remanded to.....of.....19....

Property \$.....

Remanded to.....of.....19....

Court Reporter.....

Accused pleads guilty

Clerk of the Court,.....

Accused found guilty

For the Crown,.....

Remanded to

For the accused,.....

for sentence.

[BACK]

No.....

Date to appear first time in Court

.....19.....

DRIVING CARELESSLY

Highway Traffic Act

INFORMATION

AGAINST

Dated	day of	19
-------	--------	----

P.C.....No.....

District.....Div.....

(Section 695)

[FRONT]
(14" x 8½")

FORM 2

THE MENTAL HOSPITALS ACT

CANADA,
PROVINCE OF ONTARIO
County of York
Municipality of
Metropolitan Toronto

IN THE NAME OF HER MAJESTY THE QUEEN
THIS IS THE INFORMATION OF

.....

.....
of The Municipality of Metropolitan Toronto

.....(occupation), hereinafter called the informant.

The informant says that he has reasonable and probable grounds to believe and does believe that

on the day of in the year 19 at The Municipality of
Metropolitan Toronto, in the County of York, did conduct in a manner which
in a normal person would be disorderly, and is apparently mentally ill

contrary to The Mental Hospitals Act, R.S.O. 1960, Chapter 236, Sec. 28.

SWORN before me
this day of A.D. 19
at The Municipality of Metropolitan Toronto Informant

A Justice of the Peace in and for the County of York.

Court Reporter,.....

Clerk of the Court,.....

For the Crown,.....

For the Accused,.....

[BACK]

.....day.....19.....
Date for Appearance

INFORMATION

under
THE MENTAL HOSPITALS ACT
(Section 25)
AGAINST

Dated day of 19

(11' x 8½')

The Municipality of Metropolitan Toronto



COURT OFFICE

Room 175, City Hall, Toronto

MAGISTRATES' COURT

Dear Sir or Madam:

.....of
.....claims
from you the sum of \$, being the amount of wages due for work done and
services rendered.

If this claim is correct, please pay such wages directly to the above named complainant. Should you dispute the claim, I shall be pleased to receive and consider your written comment.

The complainant has been advised that if within seven days of the date of this letter the parties herein concerned fail to reach a mutually satisfactory agreement, application may be made for a summons under The Master and Servant Act, R.S.O. 1960, Chapter 230.

Yours truly,

Justice of the Peace

per

WAGE CLAIM SHEET

Complainant.....

.....

..... Telephone.....

Employer

.....

.....

Type of Work
or OccupationWork Period for
which Wages
Claimed

Last Day of Work

Basis of Pay

Amount Claimed

Letter Sent—Date.....

J.P.....

Clerk.....

REMARKS:

(14" x 8½")

STATEMENT OF CLAIM OF UNPAID WAGES

..... vs.
 (Employee) (Employer)

Type of work done:.....

How Paid: ☐ Hourly ☐ Daily ☐ Monthly ☐ Weekly ☐ Job

Rate of Pay: \$..... per

Amount Due:\$.....

Day Started Work:.....

Last Day of Employment:.....
 (or last payment of wages)

List of Time Worked and Money Earned: (Hourly workers list each day separately)

DATE	TIME WORKED	RATE OF PAY	TOTAL
		at \$ per	
		at \$ per	
		at \$ per	
		at \$ per	
		at \$ per	
		at \$ per	
		at \$ per	
		at \$ per	
		at \$ per	
		at \$ per	

TOTAL MONEY EARNED \$.....

List of Money Received:

DATE	AMOUNT RECEIVED
	\$
	\$
	\$
	\$

TOTAL MONEY RECEIVED: \$

Money Earned Less Money Received = TOTAL MONEY DUE

Employee's Signature:.....

(R.S.O. 1960, Chap. 189)

[FRONT]
(7" x 8½")**NOTICE OF AN APPLICATION TO A MAGISTRATE FOR AN
ORDER UNDER THE INNKEEPERS ACT**CANADA,
PROVINCE OF ONTARIO
County of York,
Municipality of
Metropolitan Toronto
TO WIT:} TO.....
}

WHEREAS an application has been made by
before the undersigned, a Justice of the Peace, in and for the County of York, for an
order as to the custody of certain goods, to wit:

seized or retained by you.

THESE ARE THEREFORE TO NOTIFY YOU, in Her Majesty's name, to appear
before me on day, the day of next, at o'clock
(Toronto time) in the noon at the City Hall, in the said city, or before such
other justice for the said city as shall then be there.

Given under my hand this day of in the year 196
at The Municipality of Metropolitan Toronto aforesaid.

COURT E

A Justice of the Peace for the County of York.

NOTICE

If you do not appear in person, or by counsel or other representative at the time and
place indicated in this Summons, the Summons will be served by personal service or
by leaving it at your place of abode, or if you are the holder of a license or permit issued
by the Minister or Department of Highways, at the address registered with the Depart-
ment, with some inmate thereof apparently not under the age of sixteen years, and in
the event of a conviction, you may be required to pay the cost of such services.

[BACK]

AFFIDAVIT

ONTARIO
County of York,
Municipality of
Metropolitan Toronto
To Wit:

I, _____ a police constable
of the City of Toronto, make oath and say that I did
on _____ day the _____ day of _____
in the year 196 _____, serve the accused, the above named
_____ with a true copy of the above summons, by

sending it to him by pre-paid post at the (above address, which is to the best of my
knowledge and belief his last or most usual place of abode), (the address registered with
the Department of Highways as being his address, according to advice received from the
Department).

SWORN before me at the City of Toronto, }
this _____ day of _____
in the year 196 _____

.....
P.C. No.

A Justice of the Peace in and for the County of York }

No.

SUMMONS

AGAINST

Name.....

Address.....

.....

.....

.....

Constable serving summons enter particulars below.

Age.....

Where born.....

Occupation.....

Married or Single.....

Served from No..... Station

Time..... Date..... 19.....

.....

Complainant

.....

Address

.....

Telephone No.

FORM 91

(7' x 8½')

CANADA,
PROVINCE OF ONTARIO
County of York,
Municipality of
Metropolitan Toronto

THE APPLICATION OF.....

Address.....
of the City of Toronto:

TAKEN this.....day of.....19.....

To a Magistrate for an order under THE INNKEEPERS ACT, R.S.O. 1960, Chapter
189, as to the custody of certain goods, to wit:—

seized or retained by.....
of the City of Toronto.

.....Complainant.

Evidence taken in Shorthand by:

.....
Court Reporter.

I DISALLOW THIS CLAIM.

Signed.....
Magistrate in and for the
Province of Ontario

I ALLOW THIS CLAIM and do hereby

order that the said.....
shall produce and deliver up the said
goods to the Police Officer in charge of

No.....Division in the said city, on or

before the.....day of.....19.....
on behalf of the complainant.

Signed.....
Magistrate in and for the Province of Ontario

(14" x 8½")

RECOGNIZANCE FOR RELEASE ON PROBATION

(Revised Statutes of Ontario 1960, Chap. 308, Sec. 6)

CANADA,
 PROVINCE OF ONTARIO }
 County of York,
 Municipality of
 Metropolitan Toronto }

Be it remembered that on this day the persons named in the following schedule personally came before me and severally acknowledged themselves to owe to Her Majesty the Queen the several amounts set opposite their respective names, namely,

Name	Address	Occupation	Amount
.....
(Accused)

to be made and levied of their several goods and chattels, lands and tenements, respectively, to the use of Her Majesty the Queen, if the said fails to the condition hereunder written.

Taken and acknowledged before me on the day of , 19 .

.....
 (Justice) (Magistrate) for the Province of Ontario

The condition of the above written recognizance is such that the within bounden person charged with an offence against a Statute of Ontario, and it appears that, regard being had to the age, character and antecedents of such person, that (he, she) be released on probation of good conduct subject to the following directions and conditions:—

1. That he shall keep the peace and be of good behaviour for a period of.....months now next ensuing and shall enter into this recognizance.
2. That such person shall be under the supervision and direction of a probation officer for the of during the period of probation.
3. That he shall obey and carry out the instructions and directions of the Court through its probation officer.
4. That he pay the costs of the prosecution within.....months from this date.
5. That he will make restitution or reparation in cash to.....
 the persons aggrieved or injured by the offence charged, for any actual damage or loss thereby caused, in the sum of \$.....within.....months from this date.
6. That he will

If therefore the person charged keeps the peace and is of good behaviour towards Her Majesty and her liege people and faithfully and well observes all the above conditions of probation during the period of.....months now next ensuing, then the said recognizance to be void, otherwise to stand in full force and virtue.

The terms and conditions of this recognizance have been explained to me and I thoroughly understand its contents.

Dated this day of 19 .

Offence: (Signed).....Accused

(Signed).....Witness

NOTE: Section 6 (4) The Probation Act, Ontario Statutes: before summary conviction of a breach of any of the directions and conditions so made, such person may in addition to any penalty that may be imposed for the original offence, be liable to a penalty of not more than \$50.00.

(R.S.O. 1960, Chap. 387)

[FRONT]
(14" x 8½")

(Non-payment of a fine, etc.)

WARRANT OF DISTRESS UPON AN ORDER
FOR THE PAYMENT OF MONEY

CANADA,
PROVINCE OF ONTARIO }
County of York
Municipality of
Metropolitan Toronto }

To Peace Officers in the said Province:

WHEREAS hereinafter called the defendant
was tried upon an information alleging that at The Municipality of
in the County of York, on the day of 19 ,
unlawfully did

AND IT WAS ORDERED THAT the said defendant should for such offence forfeit
and pay the sum of dollars to be paid and applied according to law
and should also pay the sum of dollars court costs and that
if the several sums were not paid forthwith the same should be levied by distress and
sale of goods and chattels of the defendant

AND WHEREAS the defendant has not paid the same THESE ARE THEREFORE
to command you in Her Majesty's name, forthwith to make sufficient distress of the
goods and chattels of the defendant, and if, within ten days next hereafter, the said sums
together with the reasonable charge of taking and keeping the distress are not paid,
then to sell the said goods and chattels, and to pay the money arising from such sale
unto me, and if no such distress is found, then to certify such fact unto me.

DATED at The Municipality of Metropolitan Toronto
on.....

THE ABOVE WAS TRIED BY A
JUSTICE OF THE PEACE ACTING
UNDER THE DIRECTION OF THE
SENIOR MAGISTRATE.

Justice of the Peace for the County of York.

DISTRESS WARRANT

Date of Conviction..... Summons No.....

Against.....

Fine \$.....

Court Costs

Issue of Warrant .50

Execution of Warrant 1.50

\$
=====

[BACK]

COUNTY OF YORK
Municipality of
Metropolitan Toronto
To Wit:

CONSTABLE'S RETURN NULLA BONA TO
A WARRANT OF DISTRESS

I, _____ Police Constable of The
Municipality of Metropolitan Toronto, in the County
of York, hereby certify to

Esquire, a justice of the peace in and for the County of
York, that by virtue of the within warrant, I have
made diligent search for the goods and chattels of the
within mentioned

and that I can find no sufficient goods or chattels of
the said

whereon to levy the sums in the said warrant mentioned.

Witness my hand this _____ day of _____ 19 ____ .

.....
Police Constable No.....

No.....Police Station

H.T.A. Secs. 156 (4), 157 (5), 158

[FRONT]
(14" x 8½")

RECOGNIZANCE

In Case of Motor Vehicle Detained or Impounded

MAGISTRATES' COURT.....

(Location of Court)

CANADA, }
PROVINCE OF ONTARIO } BE IT REMEMBERED that on this day, the persons
County of York, } named in the following schedule personally came before
Municipality of } me and severally acknowledged themselves to owe to
Metropolitan Toronto } Her Majesty the Queen the several amounts set
opposite their respective names, namely:

NAME	ADDRESS	OCCUPATION	AMOUNT
.....
(Accused)
(Surety)
(Surety)
(Surety)

to be made and levied of their several goods and chattels, lands and tenements respectively, to the use of Her Majesty the Queen, if there is a breach of the conditions hereunder written.

TAKEN and acknowledged before me on the.....day of.....A.D. 19....., at The Municipality of Metropolitan Toronto.

A Justice of the Peace in and for the County of York

MOTOR VEHICLE DETAINED

WHEREAS the within bounden.....was on.....A.D. 19....., remanded to.....A.D. 19....., to answer to a charge that he at The Municipality of Metropolitan Toronto, in the County of York, unlawfully did

NOW THEREFORE the condition of the above written recognizance is such that if the said.....above named does not cause or permit the motor vehicle bearing number plates.....for the year 19....., to be sold or transferred until the said charge has been finally disposed of by the court having jurisdiction thereof and produces the said motor vehicle at.....on the date of hearing, the said recognizance is void, otherwise it stands in full force and virtue.

MOTOR VEHICLE IMPOUNDED

WHEREAS the within bounden.....was on.....A.D. 19....., convicted for that he on.....A.D. 19....., at The Municipality of Metropolitan Toronto, in the County of York, unlawfully did

and a motor vehicle bearing number plates.....for the year 19....., owned or registered in the name of.....(name).....(address).....
was by reason of such conviction seized, impounded and taken into custody of the law for a period of three months now next ensuing:

NOW THEREFORE the condition of the above written recognizance is such that if the said motor vehicle is not operated upon any highway before.....A.D. 19....., the said recognizance is void, otherwise it stands in full force and virtue.

(Front Continued)

MOTOR VEHICLE - CONVICTION APPEALED

WHEREAS the within bounden.....was on..... A.D. 19....., convicted for that he on..... A.D. 19....., at The Municipality of Metropolitan Toronto, in the County of York, unlawfully did

AND WHEREAS the said.....has entered an appeal against the said conviction:

NOW THEREFORE the condition of the above written recognizance is such that if the said.....above named does not cause or permit the motor vehicle bearing number plates.....for the year 19....., to be sold or transferred until the said appeal has been disposed of by the court having jurisdiction thereof and produces the said motor vehicle at.....on the date of hearing of the appeal, the said recognizance is void, otherwise it stands in full force and virtue.

MT 570

[BACK]

RECOGNIZANCE
In Case of Motor Vehicle
Detained or Impounded

I HEREBY CERTIFY that it has been proven before me that the condition of the within recognizance has not been met because of.....

.....
by reason whereof the within written recognizance is forfeited.

Dated..... day of..... 19..... A.D. 19.....
at The Municipality of Metropolitan Toronto.

Magistrate, or Justice of the Peace

In case of cash bond, signature of person
depositing cash.....

RECEIVED..... 19....., from the
MAGISTRATES' COURT CLERK the sum of
..... Dollars (\$.....)

Bondsman

[FRONT]
(14" x 8½")

RECOGNIZANCE OF BAIL

TAKEN BY AN OFFICER IN CHARGE OF A POLICE STATION
(For offences under Ontario Statutes or By-Laws only)

CANADA,
PROVINCE OF ONTARIO }
County of York
Municipality of
Metropolitan Toronto }

BE IT REMEMBERED that on this day, the persons named in the following schedule personally came before me and severally acknowledged themselves to owe to Her Majesty the Queen the several amounts set opposite their respective names, namely:

<u>NAME</u>	<u>ADDRESS</u>	<u>OCCUPATION</u>	<u>AMOUNT</u>
(Accused)			
(Surety)			
(Surety)			
(Surety)			
(Surety)			
(Surety)			
(Surety)			
(Surety)			

to be made and levied of their several goods and chattels, lands and tenements respectively, to the use of Her Majesty the Queen, if the said accused fails in the conditions hereunder written.

Taken and acknowledged before me on the day of
A.D. 19 , at The Municipality of Metropolitan Toronto.

.....
Officer in charge of number Police Station.

WHEREAS the above-named accused has been charged that
he (within three months ending) on the day of
Strike out if not applicable
A.D. 19 , at The Municipality of Metropolitan Toronto, in the County of York,
unlawfully did

NOW, THEREFORE, the condition of the above written recognizance is that if the
accused personally appears before the Magistrates' Court,
on the day of
next, at the hour of o'clock in the noon, to answer to the charge and to
be dealt with according to law, the said recognizance is void, otherwise it stands in full
force and virtue.

[BACK]

THE CRIMINAL CODE PROVIDES THAT

669. **RECOGNIZANCE BINDING.** Where a person is bound by recognizance to appear before a court, justice or magistrate for any purpose and the session or sittings of that court or the proceedings are adjourned or an order is made changing the place of trial, that person and his sureties continue to be bound by the recognizance in like manner as if it had been entered into with relation to the resumed proceedings or the trial at the time and place at which the proceedings are ordered to be resumed or the trial is ordered to be held.

670. (1) **RESPONSIBILITY OF SURETIES.** Where an accused is bound by recognizance to appear for trial, his arraignment or conviction does not discharge the recognizance, but it continues to bind him and his sureties, if any, for his appearance until he is discharged or sentenced, as the case may be.

(2) **COMMITTAL OR NEW SURETIES.** Notwithstanding subsection (1), the court, justice or magistrate may commit an accused to prison or may require him to furnish new or additional sureties for his appearance until he is discharged or sentenced, as the case may be.

EFFECT OF COMMITTAL. The sureties of an accused who is bound by recognizance to appear for trial are discharged if he is committed to prison pursuant to subsection (2).

This recognizance has been read over to me and explained and I fully understand the same.

Signature of Accused

Signature of Bondsman

Recognizance of Bail

Taken by an Officer in Charge
of a Police Station

(Section 676)

CERTIFICATE OF DEFAULT

I hereby certify that.....

has not appeared as required by this recognizance and that by reason thereof the ends of justice have been defeated or delayed, as the case may be.

The reason for the default is.....

The Names and Addresses of the principals and sureties are as follows:

Dated day of 19

Dated this day of in the year 19

Judge, Magistrate, or Justice of the Peace.

In case of cash bail, signature of person depositing cash.

RECEIVED..... 19..... from the

MAGISTRATES' COURT CLERK the sum of

\$..... Dollars

Bondsman

